



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 355

INTERNATIONAL HARVESTER COMPANY AND
INTERNATIONAL HARVESTER COMPANY OF
AMERICA, APPELLANTS,

vs.

DEPARTMENT OF TREASURY OF THE STATE OF
INDIANA, M. CLIFFORD TOWNSEND, JOSEPH
M. ROBERTSON, ET AL., ETC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

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IN THE SUPREME COURT OF INDIANA

Appeal from the Marion Supreme Court, Room Three

Cause No. 27767

DEPARTMENT OF TREASURY OF THE STATE OF INDIANA, M.
Clifford Townsend, Joseph M. Robertson and Frank G.
Thompson, as and constituting the Department of Treas-
ury of the State of Indiana, Appellants

VS.

INTERNATIONAL HARVESTER COMPANY, and INTERNATIONAL
HARVESTER COMPANY OF AMERICA, Appellee

APPELLANTS' ASSIGNMENT OF ERROR—Filed August 27, 1942

The appellants say there is manifest error in the pro-
ceedings and judgment of the Court below in this to-wit:

1. The Court erred in overruling the appellants' Motion
for a New Trial which motion assigned as grounds therefor:

"1. The decision of the Court is not sustained by suf-
ficient evidence.

"2. The decision of the Court is contrary to law."

Wherefore, the appellants respectfully pray that the
judgment below be reversed.

[fol. 7] (Signed) George N. Beamer, The Attorney
General; Joseph P. McNamara, Deputy Attorney
General; David I. Day, Jr., Deputy Attorney Gen-
eral; Byron B. Emswiller, Deputy Attorney Gen-
eral.

[fol. 8] IN THE SUPERIOR COURT, MARION COUNTY, STATE
OF INDIANA, ROOM 3

No. B-6198

INTERNATIONAL HARVESTER COMPANY, and INTERNATIONAL
HARVESTER COMPANY OF AMERICA, Plaintiffs,

vs.

DEPARTMENT OF TREASURY OF THE STATE OF INDIANA: M.
Clifford Townsend, Joseph M. Robertson and Frank G.
Thompson, as and constituting the Department of Treas-
ury of the State of Indiana, Defendants

COMPLAINT—Filed August 17, 1939

The International Harvester Company and the International Harvester Company of America complain of the Department of Treasury of the State of Indiana, and of M. Clifford Townsend, Joseph M. Robertson and Frank G. Thompson, residents and citizens of the State of Indiana, as and constituting the Department of Treasury of the State of Indiana, as follows, to wit:

Said International Harvester Company is a corporation of the State of New Jersey with general offices at 180 North Michigan Avenue, Chicago, Illinois.

The International Harvester Company of America is a corporation of the State of Wisconsin with general offices at 180 North Michigan Avenue, Chicago, Illinois.

Both said corporations have been admitted to do business and have done business in the State of Indiana for many years.

In 1935 the International Harvester Company of America [fol. 9] purchased from the International Harvester Company the products manufactured by the latter Company, and sold them in the United States through its selling branches to dealers, who sold to the public. The International Harvester Company of America also made some sales itself direct to the public.

On December 31, 1935 the International Harvester Company of America sold all of its inventories and receivables in all states of the United States, except Wisconsin, to the International Harvester Company and ceased doing busi-

ness in Indiana and other states except in Wisconsin, where it remained in business. In 1936, accordingly, the entire manufacturing and selling business in Indiana and in other states, except Wisconsin, was conducted by the International Harvester Company.

From the inception of the Indiana Gross Income Tax on May 1, 1933 to the present time, the International Harvester Company and the International Harvester Company of America, under authority from the Indiana Gross Income Tax Division, have filed consolidated gross income tax returns with the State of Indiana. In 1936, however, all the sales and taxes thereon were those of the International Harvester Company.

The International Harvester Company is engaged in the business of manufacturing and selling agricultural implements and agricultural machines of all kinds, tractors, cream separators, stationary engines, and kindred lines, repairs for such articles, binder twine, and also motor trucks.

In 1935 and 1936 the International Harvester Company had, and at the present time has, manufacturing plants in Chicago, East Moline, Rock Falls, Rock Island and Canton, Illinois; in Springfield, Ohio; Auburn, New York; Chattanooga, Tennessee; Milwaukee, Wisconsin; New Orleans, [fol. 10] Louisiana; and Fort Wayne and Richmond, Indiana.

The business locations in Indiana are the same today as in 1935 and 1936, except that in 1938 the International Harvester Company began operating a new plant in Indianapolis for manufacturing motors for motor trucks and harvester-threshers. The International Harvester Company has a plant in Fort Wayne, Indiana, known as the Fort Wayne Works, International Harvester Company, which manufactures motor trucks. It also has a plant in Richmond, Indiana, known as the Richmond Works, International Harvester Company, which manufactures seeding machines and other light tillage implements and machines.

The International Harvester Company has more than 100 selling branches in the United States. It has selling branches in the State of Indiana at Indianapolis, Terre Haute, Fort Wayne and Evansville. It also has branches outside Indiana, making sales to purchases in Indiana, namely, at Louisville, Kentucky, Kankakee and Chicago, Illinois, and Cincinnati, Ohio.

The Company's goods are divided into its General Line goods and Motor Trucks. By "General Line" is meant all goods except Motor trucks. That is, the General Line includes agricultural implements and machines, tractors, cream separators, stationary engines and binder twine. In some cities there are separate General Line and Motor Trunk branches, and in other cities the branches are combined. Indianapolis has a General Line and a Motor Truck Branch. Evansville, Fort Wayne and Terre Haute have combined General Line and Motor Truck Branches.

The branches sell at wholesale to dealers, who resell to the public at retail. The branches also make sales of machines and implements at retail to customers in territories where the Company has no dealer representation. The branches also sell repairs at retail. Motor Trucks are sold both to dealers, who resell to the public, and by the Company direct through its branch house organization. Moreover, the Company has in Indiana 10 retail stores known as McCormick-Deering Stores, selling both its General Line and Motor Trucks at retail; and two Motor Truck Sub-branches in Indiana, selling motor trucks at retail.

The Company has general transfer warehouses in Chicago, and Moline, Illinois, Kansas City, Missouri, St. Paul, Minnesota, and Council Bluffs, Iowa, at which it maintains general stocks of its goods for ready shipment to its branches and dealers, and a motor truck general transfer warehouse at Elizabeth, New Jersey.

The general offices of the International Harvester Company are located in Chicago, Illinois. The Company has an Executive Department, a Manufacturing Department, a Purchasing Department, a Sales Department, and other departments, the heads of which are located at the General offices of the Company in Chicago, Illinois. The purchasing of materials and supplies for the operation of its manufacturing plants in the State of Indiana and other states is all managed and controlled by the Purchasing Department of the general office at Chicago, Illinois. The general policies of the Company are determined by the executive officers of the Company in Chicago, Illinois, the Board of Directors meets there, and the quantity of supplies to be purchased at each of its plants and the distribution to the selling branches of the goods manufactured at the plants, are determined by the general offices in Chicago, Illinois.

The territories of the selling branches have been assigned to them as the result of many years' experience of the [fol. 12] Company in the business. These territories are business units and frequently extend beyond the boundaries of the state in which the branch is located. The business not only of the plaintiffs but of other persons in Southeastern Indiana naturally gravitates to Cincinnati, in southern Indiana adjacent to Louisville it gravitates to Louisville, and in Kentucky adjacent to Evansville it flows into Evansville, in Illinois near Terre Haute it flows into Terre Haute, and in Indiana adjacent to Kankakee it flows into Kankakee, Illinois.

The branch at Indianapolis has 28 counties and part of another county in Central Indiana, and in 1935 and 1936 it also had one county, Darke County, in Ohio.

The branch at Evansville, Indiana, handles 16 counties in Kentucky and 14 counties in Illinois, in addition to 10 counties in southwestern Indiana. The branch at Fort Wayne handles 18 counties in northeastern Indiana, and in addition 5 counties in Ohio. The branch at Terre Haute handles 8 counties and part of another county in Indiana, and 12 counties and part of another county in Illinois. The Louisville branch, in addition to Kentucky territory, handles 11 counties in southern Indiana. The Kankakee branch, in addition to Illinois territory, handles 9 counties and part of another county in western Indiana. The Cincinnati branch, in addition to Ohio territory, handles 5 counties in Southeastern Indiana. The Chicago Motor Truck Branch, in addition to Illinois territory, handles part of Lake County, Indiana.

The Company does not have, and never has had, facilities in Indiana sufficient to serve all of its Indiana dealers and users. An extensive reorganization of the Company's business would be required in order that all of its sales to [fol. 13] Indiana dealers and users be handled by Indiana branches, and would result in an artificial and inefficient method of doing business, and would involve large additional expenditures.

One branch is not permitted to solicit business from a dealer or user living in the territory of another branch, and in the unusual case where a sale is made by a branch to a customer in the territory of another branch, the former branch will transfer credit for the sale to the latter branch.

The territories of the branches doing business in Indiana were established long before the Indiana Gross Income Tax took effect on May 1, 1933. There has been no change in the territories of the branches doing business in Indiana, except that in 1938 Darke County, Ohio, which had formerly been part of the territory of the Indianapolis branch, was transferred to the territory of the Columbus, Ohio, branch.

The transactions herein set forth were made in the plaintiffs' usual and long-established manner of doing business.

In the case of wholesale sales, which are sales to dealers who resell at retail to the public, it is the business practice of the plaintiff for a traveler from the branch in whose territory the dealer is located to solicit a contract with the dealer in the late fall for the ensuing year, in which the dealer orders his estimated requirements of the plaintiff's goods for such ensuing year. This contract is sent to the branch house for acceptance, and if agreed to, will be accepted by the Branch Manager. The contract is not effective until so accepted by the Branch Manager. Later from time to time the dealer will send instructions to the Company, specifying the shipments he desires made of the goods so ordered by him. Moreover, the dealer gives additional orders for goods to a Company traveler, or sends them in by mail to the Branch House.

In the case of such wholesale sales, the contract or order provides for shipment of the goods to the dealer's place of business. It is impossible, however, for a branch house to keep in stock sufficient goods to supply its dealers, and it is necessary to fill a large part of the dealers' orders by shipments direct from the factory or general transfer house of the Company direct to the dealer. Moreover, to save freight expense, it is the business practice of the Company to ship carload orders from the factory or transfer house of the Company direct to the dealers. In case such a carload shipment cannot be furnished from a given factory or transfer house, the shipment of the goods is made from the branch house to the dealer. The branch house stock is intended to supply emergency demands of dealers in the selling season when they cannot wait for shipment from the factory or general transfer house, and to supply dealers whose requirements are less than carload lots, and to supply dealers who come to the branch with their own trucks and

take their goods away. Shipment to dealers, therefore, may be made either by freight direct from the factory or transfer house to the dealer, from the branch house stock to the dealer, or the dealer may go to the factory or transfer house or branch house and take delivery himself. Accordingly, the contracts with dealers contemplate that a large portion of the shipments to the dealers will be made from the factories or transfer houses of the taxpayer in other states direct to the dealers, and a large portion of the shipments are so made.

In the case of retail sales, if the buyer is to take delivery [fol. 15] himself at the factory or branch house, it is the business practice for the order or contract so to state.

Many purchasers of the motor trucks manufactured at the Fort Wayne Works go to Fort Wayne themselves and drive the trucks away in order to save delivery expense. Many trucks are delivered to the purchasers by companies or persons performing driveaway services. Some trucks are delivered by freight direct from the factory to the purchasers. The branch house also delivers trucks out of the branch house stock.

The factories of the Company make no sales. The sales are all made by the selling branches. The selling branch solicits the order, accepts it, receives payment, and issues an order to the factory for delivery or shipment to the purchaser. The part of the factory in the transaction is merely the delivery of the article. In the case of the Fort Wayne Works, the Fort Wayne Works (which manufactures motor trucks) makes no sales of trucks, accepts no orders or contracts, receives no part of the purchase price of the trucks, but merely delivers the trucks as ordered by the branches.

The dealer or the user makes payment to the branch which sold him the goods. It is the business practice for the dealer to turn in to the branch in whose territory he is located notes from the users to whom he has sold goods, which notes will apply as direct credit on the dealer's indebtedness to the Company. The notes given in part payment for the Company's goods are paid to the branch of the Company which made the sale, or in whose territory the dealer is located. Each branch regularly remits to the General Office of the Company in Chicago, Illinois, all funds received from its sales.

[fol. 16] In each of the classes of sales hereinafter mentioned all sales, except where an article is sold entirely for cash, are made on conditional sales contracts under which the Company retains title until the last of the purchase price instalments is paid by the dealer or user as the case may be. The dealer, however, is permitted to resell in the ordinary course of trade for value received the goods sold to him on conditional sale contract. The sale by the dealer to the user, unless entirely for cash, is also a conditional sale, the purchase price being evidenced by conditional sale notes, and if, as stated above, the dealer turns in the user's notes as direct credit on his indebtedness, the Company retains title to the goods sold to the user until the user's notes are paid. A substantial majority of the sales to dealers and users are so made on conditional sale contracts.

The classes of sales on which the plaintiffs claim refund are as follows:

Class A: Sales by branches of the plaintiff located outside the State of Indiana to dealers and users residing in the State of Indiana. By user is meant the consumer who buys at retail. The goods in these cases were shipped from branches or general transfer houses or factories of the plaintiff outside Indiana to the purchasers inside Indiana. The sales in this class were made on orders solicited in Indiana by travelers from branches outside Indiana or on orders received by mail from the purchasers in Indiana and sent to the branches outside Indiana. The orders were accepted by branches outside Indiana.

It is the business practice of the plaintiff for the order or contract of sale to provide where delivery shall be made, [fol. 17] and in all cases in this class the parties contemplated, and the contract of sale provided, that delivery should be made by the branch outside Indiana to the purchaser in Indiana, by shipment from the factory, transfer house or branch house.

It is estimated that the percentage of goods of Indiana manufacture, sold by branches located outside of Indiana which made sales to purchasers in Indiana, was 2.81%. This percentage is lower than the general percentage of goods manufactured in Indiana, sold by branches doing business in Indiana, because it is estimated that there would be no motor trucks included in the sales in Class A. On this basis it is estimated that of the amount of \$2,224,421.70,

sales in Class A, the amount of \$62,506.25 were of Indiana manufacture and \$2,161,915.45 were of goods manufactured outside Indiana.

The sales in Class A consist of the following:

Retail sales in Class A		\$82,111.86
Tax at 1%		821.12
Wholesale sales in Class A	2,142,309.84	
Tax at $\frac{1}{4}\%$		5,355.77
Total	Sales	\$2,224,421.70
	Tax	\$6,176.89

Class B: Sales by branches of the plaintiff located outside Indiana to dealers and users residing outside Indiana, who took delivery of the goods themselves in the State of Indiana for the purpose of making the transportation at a less cost than by common carrier. The orders in this class were solicited from purchasers residing outside Indiana by travelers from a branch of the Company located outside Indiana, or were received by mail at branches outside Indiana from purchasers residing outside Indiana. The [fol. 18] orders and contracts were all accepted by branches located outside Indiana. The sales in this class were motor trucks manufactured at the Fort Wayne Works.

In the case of wholesale sales, the contracts or orders provide for the goods to be shipped by the Company to the buyer at the buyer's place of business. If the dealer desires to take delivery of the truck himself at Fort Wayne in order to save the difference between the cost of such transportation and the cost of shipment by freight or driveaway by the Company's employes or by a driveaway company to the dealer, it is the custom for him to notify the Company at the time he desires delivery.

In the case of retail sales, if the user desires to save delivery expense by driving the truck away himself, it is the business practice for the contract or order so to state.

The sales in Class B consist of the following:

Retail sales in Class B	\$382,088.04	
Tax at 1%		\$3,820.88
Wholesale sales in Class B	279,620.19	
Tax at $\frac{1}{4}\%$		699.05
Total	Sales	\$661,708.23
	Taxes	\$4,519.93

Class C: Sales by branches located outside Indiana to purchasers residing in Indiana, who took delivery of the goods themselves in Indiana for the purpose of saving the difference between the cost of transporting the goods personally and the cost of transportation by common carrier. The orders in this class were solicited by travelers of branches outside Indiana from purchasers residing in Indiana, or were received by mail by branches outside Indiana [fol. 19] from purchasers residing in Indiana. It is estimated that most of the sales in this class were of motor trucks manufactured at the Fort Wayne Works, and a small amount of goods manufactured by the Richmond Works, Richmond, Indiana.

In the case of wholesale sales, the contracts or orders provide for the goods to be shipped by the Company to the buyer at the buyer's place of business. If the buyer desires to take delivery of the goods himself, either at Fort Wayne or Richmond, in order to save the difference between the cost of such transportation and the cost of shipment by freight, or, in the case of motor trucks, by driveaway by the Company's employees or by a driveaway company to the dealer, it is the custom for the dealer to notify the Company at the time he desires delivery.

In the case of retail sales, if the user desires to save delivery expense by driving the truck away himself, it is the business practice for the contract or order so to state.

The sales in Class C consist of the following:

Retail sales in Class C	\$49,140.11	
Tax at 1%		\$491.40
Wholesale sales in Class C	65,845.97	
Tax at 1/4%		164.61
Total	Sales	\$114,986.08
	Taxes	\$656.01

Class D: Sales by branches of the plaintiff located in Indiana to dealers and users residing outside Indiana, who came to Indiana and took delivery of the goods themselves in Indiana for the purpose of making transportation of the goods personally at a lesser cost than by common carrier. [fol. 20] In this class the orders were received by travelers

from Indiana branches who solicited the purchasers outside Indiana, or were sent by mail to the Indiana branches from purchasers outside Indiana. The orders were accepted by the branches inside Indiana.

In the case of wholesale sales, the contracts or orders provide for the goods to be shipped by the Company to the buyers at the buyers' places of business. If the dealer desires to take delivery of the goods himself at the branch in order to save the difference between the cost of such transportation and the cost of shipment by freight to the dealer's place of business, it is the business custom for him to notify the Company at the time he desires delivery that he will come and get the goods himself.

In the case of retail sales, if the user desires to save delivery expense by calling for the goods himself, it is the business practice for the order or contract so to state.

On the basis that in 1935 and 1936 12.10% of the sales of the Indiana branches were goods of Indiana manufacture, of the total sales in Class D, \$138,666.13 would be goods of Indiana manufacture and \$1,007,335.04 goods manufactured outside Indiana.

The sales in Class D consist of the following:

Retail sales in Class D	\$54,206.77	
Tax at 1%		\$542.07
Wholesale sales in Class D	1,091,794.40	
Tax at $\frac{1}{4}\%$		2,729.49
Total	\$1,146,001.17	
Sales Taxes		\$3,271.56

[fol. 21] *Class E:* Sales by branches located in Indiana to dealers and users residing in the State of Indiana, where the goods were shipped by the seller from outside the State of Indiana and where the order or contract of sales specified that shipment should be made from a point outside Indiana to the purchaser in Indiana. In these cases the orders were solicited from purchasers residing in Indiana by travelers of Indiana branches, or the orders or contracts were received by mail by Indiana branches. The orders and contracts were accepted by branches in Indiana. The sales in this class were of goods manufactured outside the State of Indiana.

The sales in Class E consist of the following:

1935		
Retail Sales	\$1613.60	
Tax at 1%		\$16.13
Wholesale Sales	194,384.87	
Tax at $\frac{1}{4}\%$		485.96
Total taxes for Class E for 1935		\$502.09
1936		
Retail sales in Class E	none	
Tax		none
Wholesale sales in Class E	78,297.32	
Tax at $\frac{1}{4}\%$		\$195.74
Total tax for Class E for 1936		\$195.74

Class F: Sales by branches located in the State of Indiana to dealers and users residing in the State of Indiana where delivery was taken by such dealers and users per- [fol. 22] sonally outside the State of Indiana for the purpose of making the transportation at a lesser cost than by common carrier. In these sales the orders were solicited in Indiana by travelers from Indiana branches, or were received by mail by the Indiana branches from Indiana customers. The orders or contracts were accepted by Indiana branches. The sales in this class were of goods manufactured outside the State of Indiana.

It is estimated that more than 90% of the sales in this class consisted of motor trucks manufactured at the Company's plant at Springfield, Ohio, of which the dealers took delivery at the factory, and of goods of which the dealers took delivery at the Chicago Transfer House. In the case of wholesale sales, the contracts provide for shipment of the goods to the dealer's place of business, but if the dealer at the time of delivery desires to take delivery of the goods himself at the factory or the company's transfer house in order to save the difference between the cost of making the transportation himself and the cost of shipment by common carrier, it is the business practice for him to notify the Company at the time he desires delivery that he will take delivery of the goods himself.

The sales in Class F consist of the following:

1935

Retail sales in Class F	10,581.46	
Tax at 1%		\$105.81
Wholesale sales	155,577.87	
Tax at $\frac{1}{4}\%$		388.94
Total taxes for Class F for 1935		\$494.75

[fol. 23]

1936

Retail sales in Class F	\$3,122.55	
Tax at 1%		\$31.23
Wholesale sales in Class F	168,748.05	
Tax at $\frac{1}{4}\%$		421.87
Total taxes for Class F for 1936		\$453.10

Pursuant to audit by the Indiana Gross Income Tax Division of the Indiana Gross Income Tax Returns of the International Harvester Company, the said Indiana Gross Income Tax Division on June 5, 1939 served the plaintiff with Notices and Demands for additional Indiana Gross Income Taxes for the calendar years 1935 and 1936 in the total amount, including interest to June 7, 1938, of \$25,737.92.

On June 15, 1939 the taxpayer paid said amount of \$25,737.92 to the Indiana Gross Income Tax Division, under protest, however, reserving the right to make claim for refund and sue to recover the amount so paid on the ground that the additional assessments were illegal, unconstitutional and void because levied on transactions in interstate commerce, on business done outside the State of Indiana, and on Gross income derived from sources outside the State of Indiana, and therefore unauthorized, illegal and unconstitutional under the Commerce Clause and the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, and under the provisions of the Indiana Gross Income Tax Act.

On August 7th, 1939, the taxpayer, the said International Harvester Company, filed its Claim for Refund with said Indiana Gross Income Tax Division, claiming refund of the following amounts of taxes and interest so paid under

[fol. 24] protest on June 15, 1939, pursuant to said Notices and Demands:

Tax for 1935	\$6,234.32	
Interest on tax for 1935	1,820.42	
Total refund claim for 1935	\$8,054.74	
Tax for 1936	\$8,390.07	
Interest on tax for 1936	1,443.09	
Total refund claimed for 1936	9,833.16	
Total refund claimed for 1935 and 1936		\$17,887.90

Said Claim for Refund divided the taxes so paid pursuant to said Notices and Demands of June 5, 1939; into Classes A, B, C, and D, herein set forth. In addition, the taxpayer claimed refund for Class E for the year 1936 in the amount of \$195.74 and for Class F for the year 1936 in the amount of \$453.10, making the total amount claimed on said Claim for Refund \$18,536.74.

On January 30, 1939 the taxpayer filed its Claim for Refund for the year 1935 for said Class E in the amount of \$502.09, and for Class F in the amount of \$494.75.

Said Claims for Refund in the total amount of \$19,533.58 were denied by the Indiana Gross Income Tax Division on August 9, 1939.

The plaintiffs say, however, that the taxes so paid for which suit is brought herein, were illegal, unconstitutional and void for the following reasons, to wit:

(1) The gross receipts upon which the aforesaid taxes were predicated are gross receipts derived from business conducted in commerce between states of the United States, and such receipts, under the terms and provisions of Sec- [fol. 25] tion 6 (a) of the Gross Income Tax Act of 1933, and as amended in 1937, are exempt from taxation by the defendants. Plaintiffs further allege that if said Gross Income Tax Act, when construed according to its true intent, imposes a tax on the gross receipts of plaintiffs derived from their business conducted as described in Classes A, B, C, D, E and F, then said Act is invalid and void for the reason that such tax constitutes a regulation of, and a burden upon, interstate commerce and is in violation of

Section 8, Article I of the Constitution of the United States.

(2) The gross receipts upon which the aforesaid taxes were predicated are gross receipts derived from activities, business and sources outside the State of Indiana under the provisions of Section 2 of the Gross Income Tax Act of 1933 and as amended in 1937, and are exempt from taxation by the defendants. Plaintiffs further allege that if said Gross Income Tax Act, when construed according to its true intent, imposes a tax upon the gross receipts of the plaintiffs derived from their business conducted as described in Classes A, B, D, C, E and F, then said Act is invalid and void for the reason that the State of Indiana has no jurisdiction to impose a tax upon such gross receipts, and the levy of such tax is lacking in due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States.

(3) The taxes on such transactions as described in said Class A, B, C, D, E and F, are levied on the entire gross receipts from such sales, and the State of Indiana did not segregate or seek to limit the tax to the activities carried on within the State, namely to the proportion of the gross [fol. 26] receipts which might properly be considered as arising from a source in Indiana. If said Gross Income Tax Act, when construed according to its true intent, imposes a tax upon said entire gross receipts, derived from the business conducted as described in Classes A, B, C, D, E and F, then said Act is invalid and void for the reason that the State of Indiana has no jurisdiction to impose a tax upon such gross receipts, and the levy of such tax is lacking in due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States.

Wherefore, plaintiffs pray for judgment in the amount of \$19,533.58 with interest at 6% per annum from the dates of payment by plaintiffs as hereinabove set forth, and for all proper relief in the premises.

Baker, Daniels, Wallace & Seagle; Warrack Wallace
and Paul N. Rowe, Edward R. Lewis, Attorneys
for Plaintiffs.

[fol. 27] IN SUPERIOR COURT OF MARION COUNTY

SUMMONS—Issued August 17, 1939

The State of Indiana, to the Sheriff of Marion County,
Greeting:

You are hereby commanded to summon Department of Treasury of the State of Indiana: M. Clifford Townsend, Joseph M. Robertson, and Frank G. Thompson as and constituting the Department of Treasury of the State of Indiana, to appear before the Judge of the Superior Court of Marion County, Indiana, on the 5th day of September, 1939, being the 2nd Judicial day of the September Term, 1939, of said Court, which term commences at the Court House in the City of Indianapolis on the first Monday in said month and year last above named then and there to answer the complaint of International Harvester Company and International Harvester Company of America and you are further commanded to serve a copy of the complaint in this case on said Department of Treasury of the State of Indiana, which copy of complaint is attached to the copy of this summons to be served on said Department of Treasury, and have you then and there this writ.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Superior Court, at my office in the City [fol. 28] of Indianapolis, the 17th day of September, 1939.

Charles R. Ettinger, Clerk Superior Court Marion Co.
(Seal.)

SHERIFF'S RETURN

Came to hand 1939 August 17 P. M. 3:14 and served the within named Department of Treasury of the State of Indiana by reading this writ to and within the hearing of J. M. Robertson, Treasurer as Chief Administrative Officer of the Department of Treasury of the State of Indiana and delivering to him true copies of the same.

Aug. 18, 1939.

Al Feeney, Sheriff of Marion County, Ind. Per Bayt,
Deputy.

and served this writ by reading to and within the hearing of the within named M. Clifford Townsend, Joseph M. Robertson and Frank G. Thompson and delivering to them a true copy of the same.

Al Feeney, Sheriff of Marion County, Ind. Per Bayt,
Deputy.

[fol. 29] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

ANSWER IN GENERAL DENIAL—Filed September 5, 1939

Come now the defendants, Department of Treasury [fol. 30] of the State of Indiana, M. Clifford Townsend, Joseph M. Robertson and Frank G. Thompson, as and constituting the Department of Treasury of the State of Indiana, and for answer to the plaintiff's complaint the said defendants, and each of them, deny each and every allegation thereof.

Omer Stokes Jackson, the Attorney General Joseph P. McNamara, Deputy Attorney General; Attorneys for the Defendants.

IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

ORDER SETTING CAUSE FOR TRIAL—October 27, 1939

It is ordered by the court that the above entitled cause be and the same is hereby set for trial, before the court, on November 7, 1939.

Russell J. Ryan, Judge.

[fol. 31] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

ORDER OF SUBMISSION—July 5, 1941

Come now the parties and by counsel, and on motion of the plaintiff the depositions of John L. McCaffey and A. T. Wollen are hereby published.

And this cause is now submitted to the court for trial, and the evidence being heard, the court now takes this cause under advisement.

Russell J. Ryan, Judge.

IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

JUDGMENT—April 29, 1942

[fol. 32] Come now International Harvester Company and International Harvester Company of America, the plaintiffs in the above entitled cause, by their attorneys of record, and come now the defendants, Department of Treasury of the State of Indiana (Gross Income Tax Division) and Gilbert K. Hewit, the Director of the Gross Income Tax Division of the Department of Treasury by their attorneys of record, said defendants being the successors in office to the Department of Treasury of the State of Indiana and its members, who were first named as defendants herein, and this cause, being now at issue, by agreement of the parties is now submitted for trial without the intervention of a jury: and

The court having considered the pleadings and evidence consisting of a stipulation of facts agreed to by all of the parties and the depositions of witnesses, and having heard the arguments of counsel and being duly advised in the premises, now finds for the plaintiffs that plaintiffs are entitled to recover from defendants, with interests, all taxes paid by plaintiffs upon receipts from retail sales in Classes A, C and D, as set forth in plaintiffs' complaint and said stipulation (except the sum of \$3,856.16) heretofore refunded to plaintiffs by defendants upon sales in Class A (filled by shipments in carload lots), and now finds that plaintiffs are not entitled to recover from defendants any of the taxes paid by plaintiffs upon receipts from retail sales in Class E or upon receipts from wholesale sales in less than carload lots in Class E or, as stipulated by the parties upon sales in Class F, as set forth in said complaint and stipulation. [fol. 33] (The taxes on all sales in Class B, and upon wholesale sales in said Class A and said Class E filled by shipments in carload lots, have been heretofore refunded to plaintiffs by defendants, and the plaintiffs accordingly are not entitled to recover from defendants in this judgment any of said taxes so refunded.)

Now, Therefore, is is Ordered and Decreed that plaintiffs herein have and recover of and from defendants herein, Department of Treasury of the State of Indiana (Gross

Income Tax Division) and Gilbert K. Hewit, the Director of the Gross Income Tax Division of the Department of Treasury, and each of them, the following amounts:

(a) as refund of gross income taxes and interest paid by plaintiffs to defendants upon receipts from transactions in Class A, the sum of \$2,320.73 as taxes, and the sum of \$531.59, as interest paid thereon, or a total of \$2,852.32. (The sum of \$3,856.16, as agreed upon by the stipulation, has heretofore been refunded to plaintiffs by defendants on account of Class A transactions and is not included in the foregoing sums or involved in this judgment.)

(b) as refund of gross income taxes paid by plaintiffs to defendants upon receipts from transactions in Class C, the sum of \$656.01 as taxes, and the sum of \$162.66, as interest paid thereon, or a total of \$818.67.

(c) As refund of Gross Income Taxes paid by plaintiffs to defendants upon receipts from transactions in Class D the sum of \$3,271.56, as taxes, and the sum of \$751.40, as interest thereon, or a total of \$4,022.96.

[fol. 34] (d) Interest upon each of said sums of \$2,852.32, \$818.67 and \$4,022.96, at the rate of three per cent (3%) per annum from the date of payment of said sums by plaintiffs to defendants, namely, June 15, 1939, to the date of payment to plaintiffs by defendants under this judgment.

And it is further Ordered, Adjudged and Decreed that the plaintiffs are not entitled to recover from defendants on account of taxes collected from plaintiffs upon receipts from retail sales in Class E or upon receipts from wholesale sales in less than carload lots in Class E or upon receipts from sales in Class F.

And it is further Ordered, Adjudged and Decreed that the defendant's pay the costs of this action.

Entered this 29th day of April, 1942.

Russell J. Ryan, Judge.

[fol. 35] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

MOTION FOR NEW TRIAL.—Filed May 6, 1942

[fol. 36] Comes now the defendants in the above-entitled cause and move the court for a new trial and for grounds therefor state:

1. The decision of the court is not sustained by sufficient evidence.
2. The decision of the court is contrary to law.

Department of Treasury of Indiana, et al., George N. Beamer, the Attorney General. Joseph P. McNamara, David I. Day, Jr., Byron B. Emswiller, Deputy Attorney Generals.

[fol. 37] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL, ETC.—JUNE 3, 1942

Come now the parties in the above entitled cause, and the defendants having heretofore filed their motion, reasons and grounds for a new trial herein as follows:

“Come now the defendants in the above entitled cause of action and move the Court for a new trial, and for grounds therefor, state:

1. The decision of the Court is not sustained by sufficient evidence.
2. The decision of the Court is contrary to law.”

which said motion having been duly submitted to the Court and the Court having been duly advised in the premises, such motion is now by the Court overrules, to which ruling the defendants at the time excepts.

And thereupon said defendants pray an appeal to the Supreme Court of Indiana and an appeal is granted to said defendants as prayed.

Said defendants request and are granted sixty (60) days in which to file all Bills of Exceptions.

Russell J. Ryan, Judge.

[fol. 38] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

ORDER SETTLING BILL OF EXCEPTIONS—July 3, 1942

Come now the defendants and present their Bill of Exceptions No. 1, and the same is now signed, sealed, and certified to be correct and to contain all of the evidence given in this cause, and the same is now ordered to be filed by the Clerk and made a part of the record without copying, and the same is now filed by the Clerk and made a part of the Record.

Russell J. Ryan, Judge.

[fol. 39] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

Bill of Exceptions—Filed July 3, 1942

APPEARANCES:

Plaintiffs: Baker, Daniels, Wallace & Seagle by Warrack Wallace.

Defendants: George N. Beamer, Attorney General of the State of Indiana, by Joseph W. Hutchinson and Joseph P. McNamara.

[fol. 40] Be It Remembered, That on the 5th day of July, 1941, the same being the 30th judicial day of the June Term, 1941, of the Superior Court of Marion County, State of Indiana, Room No. Three, the following proceedings were had in the above entitled cause, before the Honorable Russell J. Ryan, Judge of said Court, To-Wit:

The cause being at issue, the same came on for trial before the Court, without the intervention of a Jury, Baker, Daniels, Wallace & Seagle, by Warrack Wallace, appearing as counsel for the Plaintiff and George N. Beamer, Attorney General of the State of Indiana, by Joseph W. Hutchinson and Joseph P. McNamara, appearing as counsel for the Defendants.

And Be It Further Remembered, That before the trial was begun, for the purpose of facilitating and expediting the trial of said cause, said Judge required to be present,

Ruth Briscoe, official reporter of said court, to take down in stenotypy the oral evidence, including both questions and answers, and note all rulings of the Judge in respect to the admission and rejection of evidence, and the exceptions taken thereto, and the documentary evidence offered and introduced on the trial of said cause, the said Ruth Briscoe, having been, at the time of her appointment duly sworn to faithfully perform her duties as such official stenotype reporter, which said appointment and her official oath as such reporter, are of and among the records of said Court.

[fol. 41] And Be It Further Remembered, That said official reporter was present and took down in stenotypy the oral and documentary evidence given and offered upon the trial of said cause, including both questions and answers, and noted all objections made to the admission of evidence, all the rulings of the Court with respect to the admission and rejection of evidence, and the exceptions taken thereto.

And the said Defendants, having requested said official reporter to furnish them with a complete transcript of said evidence, objections, rulings of the Court thereon, and the exceptions taken thereto; including all documentary evidence, a typewritten transcript of the same was made by said reporter, which Typewritten Transcript Is In the Words and Figures Following, That Is To Say:

[fol. 42] Mr. Hutchinson (Atty. for Defs.):

The Parties now offer and read in evidence stipulation of certain facts which are agreed upon by the parties, which stipulation is in the words and figures following:

IN SUPERIOR COURT, MARION COUNTY, INDIANA

[Title omitted]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the facts hereinafter set forth shall be considered as facts proven under the issues in this cause with the same force and effect as though established by competent evidence introduced at the trial, namely:

[fol. 43] 1. The Defendant, Department of Treasury of the State of Indiana, is an executive-administrative division

of the State of Indiana, created by Chapter 4 of the Acts of the Indiana General Assembly of 1933, charged with the enforcement and administration of the Indiana Gross Income Tax Act of 1933, and that Act as amended in 1937.

2. Defendant M. Clifford Townsend is the duly elected, qualified and acting Governor of the State of Indiana, and is a member of the Board of the Department of Treasury of the State of Indiana. Defendant Joseph M. Robertson is the duly elected, qualified and acting Treasurer of the State of Indiana, and is the Chief Administrative Officer of the Department of Treasury of the State of Indiana, and is a member of the Board of the Department of Treasury of the State of Indiana. Defendant Frank G. Thompson is the duly elected, qualified and acting Auditor of the State of Indiana, and is a duly appointed qualified and acting member of the Board of the Department of Treasury of the State of Indiana. Defendants M. Clifford Townsend, Joseph M. Robertson and Frank G. Thompson together constitute the Board of the Department of Treasury of the State of Indiana, and as such are in charge of said The Department of Treasury.

3. Plaintiff International Harvester Company is a corporation duly organized and existing under the laws of the State of New Jersey, with its general offices at 180 North Michigan Avenue, Chicago, Illinois.

4. Plaintiff International Harvester Company of America, a corporation duly organized and existing under the laws of the State of Wisconsin, at all times covered by the [fol. 44] Complaint, maintained its general offices in the City of Chicago, Illinois. At all times covered by the Complaint it was a distributor of products manufactured by the International Harvester Company. All of the capital stock of the International Harvester Company of America was owned by the International Harvester Company. On December 31, 1939 the International Harvester Company of America was dissolved and all its assets distributed to the International Harvester Company, its sole stockholder.

5. The International Harvester Company of America was admitted to do business in the State of Indiana under the name of the Milwaukee Harvester Company, a Wisconsin corporation, on May 20, 1901. On May 29, 1902 there was

filed in the office of the Secretary of State of Indiana a certified copy of Certificate of Change of Name of said Milwaukee Harvester Company to that of International Harvester Company of America. Said International Harvester Company, a New Jersey corporation, was admitted to do business in the State of Indiana on the 11th day of June, 1920.

6. During the entire year 1935, the International Harvester Company of America, as a sales subsidiary of the International Harvester Company, and wholly owned by it, purchased from the International Harvester Company the products manufactured by the latter company, and the International Harvester Company of America through its selling branches in the United States sold such products principally to dealers, who in turn sold such products to the public. The International Harvester Company of America also made some sales of such products direct to the public and not through dealers.

[fol. 45] 7. On December 31, 1935 the International Harvester Company of America sold all of its inventories and receivables in all states of the United States, except Wisconsin, to the International Harvester Company and ceased doing business in Indiana and all other states except Wisconsin. Accordingly, during the entire year 1936 and all subsequent years the International Harvester Company alone conducted the manufacturing and selling business in Indiana and in all other states except Wisconsin. The selling activities and selling branches hereinafter referred to were those of the International Harvester Company of America during 1935, and during subsequent years were those of the International Harvester Company, sometimes referred to as the "Company".

8. From May 1, 1933 to Dec. 31, 1939, the International Harvester Company and the International Harvester Company of America, under authority from the Indiana Gross Income Tax Division, have filed consolidated Gross Income Tax returns with the State of Indiana, although in 1936 and subsequent years all the sales of goods and the taxes thereon were those of the International Harvester Company. It is agreed by the parties hereto that for all purposes of this cause, the International Harvester Company and the International Harvester Company of America shall

be treated as the same party, and that, if any amount shall be found by the Court to be owing to the Plaintiffs or either of them in this matter, such amount shall be paid to the International Harvester Company and the judgment herein shall so provide.

[fol. 46] 9. The International Harvester Company has been for many years, and is now, engaged in the business of manufacturing and selling agricultural implements and machines and kindred products, repair parts and replacements for such articles and motor trucks.

10. In 1935 and 1936 the International Harvester Company had, and at the present time has, manufacturing plants in Chicago, East Moline, Rock Falls, Rock Island and Canton, Illinois; in Springfield, Ohio; Auburn, New York; Chattanooga, Tennessee; Milwaukee, Wisconsin; New Orleans, Louisiana; and Fort Wayne and Richmond, Indiana.

11. The business locations in Indiana are the same today as in 1935 and 1936, except that in 1938 the International Harvester Company began operating a new plant in Indianapolis for manufacturing motors for motor trucks and harvester-threshers. The International Harvester Company had in 1935 and 1936, and now has, a plant in Fort Wayne, Indiana, known as the Fort Wayne Works, International Harvester Company, which manufactures motor trucks. It also had in 1935 and 1936, and now has, a plant in Richmond, Indiana, known as the Richmond Works, International Harvester Company, which manufactures seedling machines and other light tillage implements and machines.

12. The International Harvester Company had in 1935 and 1936, and now has, selling branches in the State of Indiana at Indianapolis, Terre Haute, Fort Wayne and [fol. 47] Evansville. It also had in 1935 and 1936, and now has, branches outside Indiana which make sales to purchasers in Indiana, such branches being located at Louisville, Kentucky; Kankakee and Chicago, Illinois; and Cincinnati, Ohio. In 1935 these selling branches were those of the International Harvester Company of America.

13. The Company's goods are divided into its General Line goods and Motor Trucks. By "General Line" is meant all goods except motor trucks. In some cities there

are separate General Line Branches and Motor Truck Branches, and in other cities the branches are combined. Indianapolis has a General Line Branch and a separate Motor Truck Branch. Evansville, Fort Wayne and Terre Haute have combined General Line and Motor Truck Branches.

14. The branches sell at wholesale to dealers, who resell to the public at retail. The branches also make sales of machines and implements at retail to customers in territories where the Company has no dealer representation. The branches also sell repair parts and replacements at retail. The Company sells motor trucks both to dealers, who resell to the public, and direct to the public through its branch house organization. Moreover, the Company has in Indiana ten retail stores known as McCormick-Deering Stores, located at the places designated in paragraph 18 hereof, selling both its General Line and Motor Trucks at retail; and two Motor Truck sub-branches in Indiana at Gary and South Bend, selling motor trucks at retail.

[fol. 48] The McCormick-Deering Stores are retail stores, each under the control of a branch house, as designated in said paragraph 18. On sales for cash, the McCormick-Deering Store completes the sale and delivery of the article itself. On sales for credit, the credit must be approved by the Branch Manager of the branch house under whose jurisdiction the McCormick-Deering Store is. These McCormick-Deering Stores are located in places where the Company was not able to obtain adequate independent dealer representation.

15. The Company in 1935 and 1936 had and now has warehouses in Chicago and Moline, Illinois, Kansas City, Missouri, St. Paul, Minnesota, and Council Bluffs, Iowa, which it calls general transfer warehouses and which are supply depots where it maintains general stocks of its goods for ready shipment to its branches and dealers during the selling season. The stocks of goods maintained at such supply depots are shipped thereto from the manufacturing plants. The goods kept at the supply depots are those in demand in the territory served by the supply depot. The Company also maintains a motor truck general transfer warehouse or supply depot at Elizabeth, New Jersey.

16. The respective territories of the Company's selling branches have been assigned to them by the Company.

Frequently such territories so determined by the Company extend beyond the boundaries of the state in which the branch house is located. The Company's branch at Cincinnati serves a company-designated territory in the southeastern part of Indiana, and parts of Ohio and Kentucky. The Company's branch at Louisville serves a company-designated territory in southern Indiana and a part of [fol. 49] eastern Kentucky. The Company's branch at Kankakee, Illinois, serves a company-designated territory in Illinois and in western Indiana. The Company's branch at Evansville serves a company-designated area which includes parts of southwestern Indiana, southeastern Illinois, and northern Kentucky. The branch at Terre Haute serves a company-designated area which includes part of western Indiana and eastern Illinois. The Chicago Motor Truck Branch serves a company-designated area which includes Chicago and the industrial and urban Calumet region of north-western Indiana. The branch at Fort Wayne serves a company-designated area which includes parts of northeastern Indiana and western Ohio. The branches at Indianapolis serve a company-designated area in central Indiana.

17. The territory assigned by the Company to the branches at Indianapolis comprises 29 counties and part of another county in central Indiana, and in 1935 and 1936 it also included one county, Darke County, in Ohio. The territory assigned by the Company to the branch at Evansville, Indiana, comprises 16 counties in Kentucky and 14 counties in Illinois, and in addition 10 counties in southwestern Indiana. The territory assigned by the Company to the Fort Wayne branch comprises 18 counties in northeastern Indiana, and, in addition, 5 counties in Ohio. The territory assigned by the Company to the branch at Terre Haute comprises 8 counties and part of another county in Indiana, and 12 counties and part of another county in Illinois. The territory assigned by the Company to the Louisville branch, in addition to Kentucky territory includes 11 counties in southern Indiana. The territory assigned by the Company to the Kankakee branch, in addition to Illinois territory, includes 9 counties and part of another [fol. 50] county in western Indiana. The territory assigned by the Company to the Cincinnati branch, in addition to Ohio and Kentucky territory, includes 5 counties in

southeastern Indiana. The Chicago Motor Truck Branch has assigned to it by the Company, in addition to Illinois territory a part of Lake County, Indiana. The territories as above defined by the Plaintiff existed without change in 1935 and 1936 and thereafter, with the single exception above noted.

18. The Company's business locations in Indiana in the years 1935 and 1936 were as follows:

Manufacturing Plants

Fort Wayne Works Fort Wayne, Indiana
(Manufacturing Motor Trucks)

Richmond Works Richmond, Indiana
(Manufacturing seeding machines and light
tillage implements.)

Selling Locations

Selling Branches	McCormick-Deering Retail Stores Under said Branches
Indianapolis—General Line Branch	Lafayette
Indianapolis—Motor Truck Branch	Logansport Muncie Richmond Rushville

[fol. 51]

Territory

Central Indiana and 1 County in Ohio, as follows:

Counties in Indiana:

Bartholomew	Hancock	Morgan
Boone	Hendricks	Owen (part)
Brown	Henry	Putnam
Carroll	Howard	Randolph
Cass	Johnson	Rush
Clinton	Madison	Shelby
Decatur	Marion	Tippecanoe
Delaware	Miami	Tipton
Fayette	Monroe	Union
Hamilton	Montgomery	Wayne.

County in Ohio:

Darke

Evansville—combined General Line and
Motor Truck Branch

Washington

Territory

Southwestern Indiana,
16 counties in Kentucky, and
14 counties in Illinois.

Counties in Indiana:

Daviess
Dubois
Gibson
Martin

Perry
Pike
Posey
Spencer

Vanderburg
Warrick

Counties in Kentucky:

Butler
Caldwell
Christian
Crittenden
Davies

Hancock
Henderson
Hopkins
Livingston
Lyon

McLean
Muhlenberg
Ohio
Trigg
Union Webster.

[fol. 52]

Counties in Illinois:

Edwards
Franklin
Gallatin
Hamilton
Hardin

Jefferson
Johnson
Massac
Pope
Saline

Wabash
Wayne
White
Williamson

Fort Wayne—combined General Line and
Motor Truck Branch

Decatur
Goshen
Kendallville

Territory

Northeastern Indiana, and
5 counties in Ohio

Motor Truck
sub-branch at
South Bend.

Counties in Indiana:

Adams
Allen
Blackford
DeKalb
Elkhart
Fulton

Grant
Huntington
Jay
Kosciusko
LaGrange
Marshall

Noble
St. Joseph
Steuben
Wabash
Wells
Whitley

Counties in Ohio:

Defiance
Mercer
Paulding
Van Wert
Williams

Terre Haute—combined General Line and
Motor Truck Branch

[fol. 53]

Territory

Western Indiana and
13 Counties in Illinois.

Counties in Indiana:

Clay	Parke
Fountain	Sullivan
Green	Vermillion
Knox	Vigo
Owen (part).	

Counties in Illinois:

Clark	Effingham
Clay	Fayette (part)
Coles	Jasper
Crawford	Lawrence
Cumberland	Marion
Douglas	Richland
Edgar	

19. The Company also had in the years 1935 and 1936 the following places of business outside Indiana which, in addition to making sales to customers outside Indiana, also made sales to customers in Indiana:

Branches outside Indiana having territory in Indiana and making sales to Indiana customers.

McCormick-Deering
Retail Stores under
said Branches

Louisville, Kentucky

Seymour, Indiana.

11 Counties in southern Indiana as follows:

Clark	Jefferson
Crawford	Jennings
Floyd	Lawrence
Harrison	Orange

[fol. 54]

Jackson

Scott
Washington

Kankakee, Illinois

9 Counties and part of 1 County in western Indiana, as follows:

Benton	Porter
Jasper	Pulaski
Lake (part)	Starke
LaPorte	Warren
Newton	White

Cincinnati, Ohio—Motor Truck Branch and
General Line Branch.

5 Counties in southeastern Indiana as follows:

Dearborn	Ripley
Franklin	Switzerland
Ohio	

Chicago Motor Truck Branch
Part of Lake County, Indiana.

Motor Truck sub-branch
at Gary, Indiana.

20. Each of the Company's branches is instructed by the Company not to solicit business from a dealer or user located in the territory of another branch. If delivery is made from the stock of another branch house, the sale is considered by the plaintiff to be a sale of the branch house in whose territory the dealer is located. In the case where a sale is made by a branch to a user in the territory of another branch, the former branch will transfer credit for the sale to the latter branch. In each such instance where the sale is made by a branch to a user who is located in territory assigned by the Company to another branch, the [fol. 55] branch effecting the sale approves the order, makes delivery or causes delivery to be made, and collects the sale price from the customer or, in the case of credit transactions, approves the credit and takes notes for the property so sold. The notes so received are then transferred to the branch in whose territory the purchaser is located, and credit given that branch for the cash received.

21. The territories of the Company's branches doing business in Indiana were established before the Indiana Gross Income Tax Act took effect on May 1, 1933. There has been no change since then in the territories assigned by the Company to the branches doing business in Indiana, except that in 1938, Darke County, Ohio, which had formerly been part of the territory assigned by the Company to the Indianapolis branch, was transferred to the territory assigned by the Company to the Columbus, Ohio, branch.

The International Harvester Company was organized in 1902 by purchase of the assets of the McCormick Harvester Company, The Deering Company, the Plano Manufacturing Company and the Warder, Bushnell & Glessner Company. Prior to 1902 there were branch houses of one or more of the predecessor companies located at Fort Wayne, Indianapolis, Terre Haute, Evansville, Cincinnati and Louisville.

Below is given a table showing the dates on which the Company's branch houses in Indiana were established and,

in the cases specified, the dates when they were discontinued:

[fol. 56]

Location	Branch House Established	
Fort Wayne	11/1/02	
Indianapolis G. L.	11/1/02	
Indianapolis M. T.	12/2/27	
Terre Haute	11/1/02	
Evansville	11/1/02	
Kankakee	11/1/03	
Cincinnati G. L.	11/1/02	
Cincinnati M. T.	1/3/28	
Louisville	11/1/02—Branch moved to New Albany 10/12/11. Back to Louisville	12/1/22
Chicago M. T.	1/1/17	
Richmond	11/1/03	Closed 9/1/32
South Bend	11/1/02	Closed 9/1/32

22. In the case of the Company's wholesale sales, which are sales to dealers who resell at retail to the public, it is the business practice of the Company for a representative from the branch in whose company-assigned territory the dealer is located to solicit an option, or contract, with the dealer in the late fall of each year, in which option, or contract, the dealer orders part and estimates the balance of his requirements of the Company's goods for the ensuing year. This option, or contract, is sent to the branch house for acceptance and, if deemed satisfactory, will be accepted by the Branch Manager, at such branch office in one of the cities heretofore named. The option, or contract, is not effective until so accepted by such Branch Manager. Later from time to time the dealer will send instructions to the Branch, specifying the manner and time he desires for [fol. 57] shipment to be made of the goods so optioned or ordered by him. Moreover, the dealer gives orders for additional goods from time to time to a Company representative, or sends such orders in by mail to the branch house. All such orders for additional goods are subject to acceptance by the Branch Manager at such branch house located in one of the cities designated herein, and are handled in the same manner and with the same effect as in the case of the goods specified in the option or contract. The pertinent provisions of the Company's options, or contracts, are set out in paragraphs 29, 30 and 31 hereof.

23. The Company's price books list 2327 different sizes and kinds of agricultural implements and machines, and 197 kinds and sizes of motor trucks; and there are 5670 different sizes and kinds of attachments for agricultural implements and machines and motor trucks, a total of 8194 items. To attempt to carry a complete stock of its full line at each branch house would require greatly increased warehouses. The branch house stock is intended to supply, so far as possible, the demands of dealers for certain of the popular items in the selling season, when they cannot wait for shipment from the factories or general transfer houses; to supply dealers whose requirements for such items are less than carload lots; and to supply dealers who come to the branch house with their own trucks and take the goods away.

24. In the case of retail sales, if the buyer is to take delivery himself at the factory or branch house, it is the Company's business practice for the order or contract so to state.

[fol. 58] 25. Many purchasers of the motor trucks manufactured at the Fort Wayne Works go to Fort Wayne and themselves drive the trucks away. This applies both to wholesale sales to dealers and retail sales to users.

26. Pursuant to the plaintiff's regulations, the factories of the plaintiff make no sales. The sales, both wholesale and retail, are all made by the selling branches. The selling branch solicits the order, accepts it, receives payment and issues an order to the factory for delivery or shipment to the purchaser. The function of the factory in the transaction is merely to manufacture the article, ship it by rail or, in some cases, by truck, or deliver it to the purchaser when he calls for it in person. For example, the Fort Wayne Works, which manufactures motor trucks, makes no sales of trucks, accepts no orders or contracts, and receives no part of the purchase price of the trucks, but delivers the trucks by rail or drive away company or to the customer personally, according as it receives instructions from the selling branch.

27. The dealer or the user makes payment to the branch or retail store which sold him the goods. It is the business practice for the dealer to turn in to the branch in whose

territory he is located notes from the users to whom he has sold goods, which notes will apply as direct credit on the dealer's indebtedness to the Company. The notes given in part payment for the Company's goods are paid to the branch of the Company which made the sale, or in whose territory the dealer is located. Each branch, regularly remits to the General Office of the Company in Chicago, Illinois, all funds received from its sales. 4

[fol. 59] 28. In each of the classes of sales hereinafter mentioned, all sales, except where an article is sold entirely for cash, are made on conditional sale contracts under which the Company retains title until the last of the purchase price installments is paid by the dealer or user, as the case may be. The dealer, however, is permitted to resell in the ordinary course of trade for value received the goods sold to him on conditional sale contracts. The sale by the dealer to the user, unless entirely for cash, is also a conditional sale, the purchase price being evidenced by conditional sale notes, and if, as stated above, the dealer turns in the user's notes as direct credit on his indebtedness, the Company retains title to the goods sold to the user until the user's notes are paid. Of the total sales, \$10,715,747.77, made in 1936 by the four Indiana branches (Indianapolis, Fort Wayne, Evansville and Terre Haute), conditional sale notes, retaining title, were received in part payment of the purchase price to the amount of \$7,243,938.23 or 67.60% of the total sales proceeds. The percentage of total sales which were made on conditional sales is considerably greater than 67.60% however, since a large amount of the cash received was in part payment of sales where conditional sale notes were taken for the balance of the purchase price. The amount of such cash could only be ascertained by an analysis of each sale made. The only sales which are not conditional sales are those wholly for cash. Ordinarily, repairs are sold solely for cash.

29. (a) The following is the form of Sale Contract for General Line Goods, executed by the International Harvester Company of America with a dealer in the year, 1935, and by the International Harvester Company with a dealer in 1936:

(Here follows 2 photolithographs, side folios 60-61.)



SALE CONTRACT AND PRICE SCHEDULE

DATED _____ 19__

TO

INTERNATIONAL HARVESTER COMPANY
OF AMERICA
(INCORPORATED)

The undersigned, the Purchaser, hereby orders of said Company the goods marked as ordered in the list made a part of this contract, and requests that the same be shipped

to _____

at _____

on or about the date or dates indicated herein.

In consideration of the acceptance of this order, the Purchaser agrees to all the terms, conditions and provisions of this contract, as follows:

1. To accept delivery of said goods at points of shipment, receive the same on arrival, pay all freight charges thereon from the f.o.b. point or points named in the price schedules, and settle for the same at the dates, terms, and prices designated in the price schedules attached hereto. The Purchaser shall pay for said goods in cash on or before the dates specified, and if not then paid, shall pay interest on such purchase price at the rate of _____ per cent per annum and shall at any time upon the Company's request execute and deliver a bankable note or notes for the purchase price of said goods or any of them, said notes to mature at the dates herein agreed upon for payment and to draw interest thereafter at the above named rate.

2. The title to all goods shipped under this contract, with right of repossession for default, is reserved by the Company until the Purchaser has made full payment in cash for all of said goods and for all notes given therefor. Prior to full settlement in cash the Purchaser shall have no right to sell or dispose of any goods delivered hereunder except for value received in the ordinary course of trade and upon the express condition that prior to the delivery of any of said goods to a customer, the Purchaser shall secure from said customer a full settlement in cash or good and bankable notes and that the proceeds of all resales shall be considered the property of the Company in lieu of the goods so sold and held in trust for it and subject to its order, as provided in paragraph four hereof, until all sums due under this contract have been fully paid. At any time on request the Purchaser will give the Company's representatives full information regarding goods on hand, goods sold and the proceeds thereof, to enable it to ascertain and enforce its reserved rights under this clause. Nothing herein shall release the Purchaser from payment for all goods ordered and delivered hereunder and after delivery to him said goods shall be held at his risk and expense in respect to loss or damage from any cause and taxes and charges of every kind.

3. **Warranty.** (On all goods covered by this contract except Farm Trucks and Wagons. Wagon warranty is given on page 158.) The Company will furnish the Purchaser with a supply of printed forms for use in reselling the goods ordered hereunder and containing written warranties applicable to the several kinds of goods. In all cases where the Purchaser gives his customer a written warranty in the form suggested, the Company will protect the Purchaser and stand back of him in giving such warranty. This agreement, however, is conditioned on the Purchaser giving the Company's Branch Manager prompt written notice of any claim or complaint by a customer. The Company shall be under no liability whatever except where a written warranty is given in said approved form without addition or alteration of any kind, and shall be released from all liability hereunder in case the Purchaser shall, without its consent, waive compliance by his customer with any of the conditions of said warranty. The Company reserves the right to change the form of warranty in any of said order blanks at any time. The net price (but no freight or express charge) of any parts which the Purchaser is liable to furnish and shall furnish a customer in fulfillment of any such warranty may be charged back to the Company, but in all such cases the broken or defective parts must be exhibited at settlement time to the authorized agent of the Company and returned to the Company, if requested. This agreement is given and accepted in lieu of all other warranties, express or implied.

4. Upon request of the Company at any time the Purchaser agrees to turn over, endorse and assign to the Company a quantity of customers' notes or, if notes are not available, then customers' accounts sufficient to fully cover and secure all indebtedness of the Purchaser hereunder, such notes and accounts to be held as collateral security to said indebtedness. Payment of said customers' notes and accounts at maturity is guaranteed by the Purchaser and presentation, demand, protest, notice of protest and diligence are waived both as to makers and endorser. In case of default in payment of any of said collateral notes or accounts, the Purchaser agrees to remit cash for full amount of same together with interest and collection charges within 15 days after maturity. All collections on collateral notes or accounts are to be credited on the note or notes or account of the Purchaser first becoming due. On payment of Purchaser's indebtedness in full, all collateral notes or accounts remaining in possession of the Company are to be returned.

5. The Purchaser further agrees that all repairs and extras for the goods specified, ordered and furnished hereunder shall be received and paid for at the prices quoted in the Company's latest repair price lists to dealers on the following terms:

Net cash two months from 1st day of the month succeeding month of shipment, with interest after maturity, subject to discount of 5 per cent for cash if paid on or before the 1st day of the month succeeding month of shipment. Purchaser to pay all transportation charges on same from point of shipment except that, if repairs are shipped from Branch Houses or Transfer points in or west of the states of Montana, Wyoming, Colorado or New Mexico, an additional charge of 10% will be made. The Purchaser agrees to order a sufficient quantity of repairs for all lines of goods handled hereunder to take care of the trade in the aforesaid territory during the term of this contract.

6. The Purchaser agrees to examine all goods on arrival and notify the Company of all claims on account of shortage, defective or damaged goods or parts, within ten days after receipt of goods, and failing so to do the Company is not to be held responsible therefor. The Company shall have a reasonable time in which to make good any shortage or defective or damaged goods or to furnish parts to replace defective parts for which it is responsible.

7. All shipments are to be routed as the Company may direct, and the Company will use its best efforts to make shipments on or before the dates specified, but it shall not be responsible for failure to ship goods on time or to fill orders, where it is prevented by act of God, or by fire or other elements, or by riots, strikes, labor disturbances, or by the law or the decree or judgment of any court, or if the demand for any goods shall exceed the Company's available supply, or by any cause beyond the Company's reasonable control; nor shall the Company be liable for any delay, damage or loss occurring after delivery of goods to carrier, and all claims for damage in transit shall be made direct by the Purchaser against carrier.

8. In addition to the goods now ordered, all goods heretofore or hereafter shipped to the Purchaser, between the dates of November 1, 1935, and October 31, 1936, both inclusive, shall be considered as sold under this contract, and subject to all of its provisions, except as different prices or terms have been or may be agreed upon at the time, and it is understood that the Company reserves the right to reject any orders for additional goods, or to change the prices and terms applicable thereto.

9. Cancellation or reduction in the amount of the original or any subsequent orders placed and accepted hereunder without the consent of the Company, or refusal to accept shipment of any goods in time for the 1936 selling season, shall be ground for termination of this contract by the Company and refusal to furnish any further goods hereunder, the Purchaser, however, remaining liable to settle for all goods previously shipped in accordance with the terms hereof.

10. The Dealer agrees to reimburse the Company for any and all sales or excise taxes, whether imposed by Federal, State or local laws, which it may be required to pay or to reimburse to others by reason of the manufacture, purchase or sale of any goods delivered under this contract. The amount of said tax may be billed as a separate item or included in the invoice price of the goods at the Company's option.

11. The prices quoted herein are not guaranteed to be effective after June 1, 1936, and goods shipped after that date shall be paid for at the Company's price in effect then in effect in Purchaser's territory.

12. In all cases where the attached schedule permit goods unsold at maturity date to be carried on extended terms to a subsequent year, it is understood that this is conditional on the prices on such carried-over goods being readjusted to conform with the Company's prices for similar goods in effect at the maturity date applicable to said goods.

13. It is understood that this order is taken subject to the acceptance of the Company's Branch Manager having charge of the district in which the Purchaser's principal place of business is located and that this contract contains the entire agreement between the parties with reference thereto, and that there shall not be any change in any of the prices, terms or conditions printed herein, unless such change is made and accepted in writing, by

said Branch Manager. The copy of this contract retained by the Company shall be considered the original and shall control in case of any variation between it and the duplicate retained by the Purchaser. The Company's rights under this contract may be assigned to any affiliated Company. The Purchaser's rights under this contract shall not be assigned without the consent of the Company's Branch Manager. All indebtedness created under this contract shall be payable at the Company's Branch House named below.

Purchaser's
Signature _____

Witnesses { _____

(Traveler)

Accepted at _____

(FBI in Town
and State)

(Branch House)

19 _____

**INTERNATIONAL HARVESTER COMPANY
OF AMERICA**
(INCORPORATED)

By _____

(Branch Manager)

PRICE GUARANTEE

If the International Harvester Company of America should reduce its prices to dealers on any of the various classes of goods covered by this contract, on or before the cash discount dates for said class of goods, as stated in the terms schedule herein contained, it agrees to adjust to such lower basis the price of any complete machines of the class affected which were purchased under this contract and which remain unshipped or on hand unsold in the possession of the dealer at the time such price change becomes effective.

[fol. 62] (b) The following are the provisions for freight on General Line Goods in 1935 and 1936:

"Freight Delivery

Bagasse Carriers.....	F.O.B. Chattanooga, Tenn.
Cane Mills.....	F.O.B. Chattanooga, Tenn.
Fertilizer Distributor.....	F.O.B. Chattanooga, Tenn.
Juice Pumps.....	F.O.B. Chattanooga, Tenn.
Kettles, Cast Iron.....	F.O.B. Chattanooga, Tenn.
Sterling Trade Wagon Boxes.....	F.O.B. Goodyear, Miss.

Goods Listed Above Take Freight Delivery Indicated

The Freight Clause Below Applies to the Following Goods.

Binders—Corn	Headers	Seeders
Binders—Rice	Huskers and Shredders	Separators—Cream
Broadcast Fertilizer Loaders—Hay		Shellers—Corn
Distributor Milkers		Side Rake and
Drills—Grain	Mowers	Tedder
Dusters	Presses—Hay	Sowers—Lime
Engines	Rakes—Sulky	Spreaders—Manure
Ensilage Cutters	Rakes—Sweep	Spreaders—Lime
Grinders—Feed	Reapers	Stackers—Hay
Grinders—Knife	Rod Weeders	Tedders
Hammer Mills	Ronning Ensilage	Wagons and Farm
Harvesters—Push	Harvesters	Trucks

Shipments direct from Factory, F. O. B. Factory, but if freight paid is in excess of Chicago rate, will be adjusted to Chicago basis.

Shipments from Branch House or Transfer Point—F. O. B. point of shipment, with an amount added to cover cost of Handling and for advance charges equalling carlot freight, from Factory or Chicago, Ill., to point of shipment.

[fol. 63]

Beet Drills	Land Packers	Plow Packer
Beet Pullers	Listers	Potato Diggers
Cultivators, all kinds	Plows, Canton,	Potato Planters
Corn Planters and drills	All kinds and types	Ridge Busters
Corn and Cotton Drills	Plows, Chattanooga Disk	Rotary Hoe
Harrow Plow	Plow Press Drills	Soil Pulverizer
Harrows, all kinds and types		Stalk Cutters
		Tandem Attachments

Goods Listed Above Take the Following Freight Delivery

F.O.B. Branch House or Transfer Point.

Freight will be refunded on car lots ordered and shipped direct from factory.

MICRO CARD

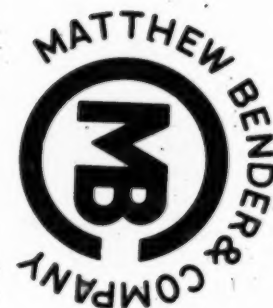
TRADE

MARK



22

2537



64



30. The Dealer's Motor Truck Contract for International Motor Trucks, effective in 1935 and 1936, provides in the "Order" clause as follows:

"1. Order. The Company hereby agrees to sell and the Dealer to buy, subject to the provisions of this contract, the International Motor Trucks and attachments listed below, to be delivered at points of shipment to be selected by the Company f. o. b. factory and paid for at the prices named below (less the discounts indicated) on sight draft attached to Bill of Lading.

"The prices quoted herein are not guaranteed to be effective after March 1, 1935, and goods shipped after that date shall be paid for at the Company's prices to dealers then in effect in Dealer's territory."

[fol. 64] Paragraph 3 of said contract, entitled "Shipping Instructions", is in words as follows:

"3. Shipping Instructions. The trucks ordered on this contract, for which shipping orders are attached hereto, are to be shipped to — at — in accordance with the following schedule of shipping dates:

Dec. Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov.

C-1 _____
 C-10 _____
 C-20 _____
 C-30 _____
 C-35 _____
 C-40 _____
 C-50 _____
 C-55 _____
 C-60 _____
 A-7 _____
 A-8 _____
 W-2 _____

Clause 25 of said contract, entitled "Approval of Contract," with the provision for signatures, is as follows:

"25. Approval of Contract. This contract shall not be binding on the Company until approved, in writing thereon, by its Branch Manager, and if not approved, all advance payments will be refunded. When

so approved, it shall be binding and conclusive on both parties.

International Harvester Company of America,
by — — —, Salesman.

Approved at — the — day of —. International Harvester Company of America.

[fol. 65] By — — —, Branch Manager.

— — —, Dealer, by — — —.

Paragraph 7 relating to "Additional Goods" reads as follows:

"7. Additional Goods. Any additional trucks of the models listed herein and attachments ordered and shipped to the Dealer during the term of this contract shall be considered as sold under the provisions of this contract except as otherwise provided at the time, it being understood that the Company may reject additional orders or change prices and terms at any time."

31. The dealer's Order for "Additional Goods," either General Line goods or Motor Trucks, is in the words and follows, to-wit:

"Order for Additional Goods

To International Harvester Company
(Incorporated)

_____ 19____
Post Office Date

Branch House

Ship to — Town — State — via — and charge to — Business Point, the following additional goods at the prices and terms and subject to conditions set forth in the sales contract for the current year now existing between us, including the title reservation clause which is reprinted on the back hereof.

(Sign here)

[fol. 66] Be sure all equipment desired is plainly specified.

Quantity	Ship About	Description

This order can be accepted only by the Company's Branch Manager.

Order taken by ———, Traveler.

32. The forms for retail sales of General Line Goods and of Motor Trucks, in effect in 1935 and 1936 are as follows:

(a) The form for retail order for General Line Goods by a user is as follows:

"Order for Goods

To —————

(Dealer)

—————

(Town) (State)

I hereby order of you the following goods:

No. Ordered	Size and Description	Price

to be delivered at your place of business on or about ———
 I agree to pay freight on same from ——— and settle on
 delivery as follows:

[fol. 67]

\$— Cash, \$— Notes, Payable _____

Then are clauses relating to interest on notes after maturity, and reimbursement by purchaser of any increases in sales and other taxes. The balance of the order form is as follows:

"_____ 19—

(Date)

(Purchaser's Signature)

(Post Office)

(R. F. D.)

(State)

(County)

(Township)

Purchaser lives _____ miles north, east, south, west of above P. O. Order taken by _____

Subject to acceptance by Dealer to whom order is addressed.

Accepted

(Date)

19—

By _____

(Give Purchaser a Copy of this Order)"

(b) The form for an order of motor trucks by a user is as follows, to wit:

"Order for International Motor Truck

To _____ Town _____ State _____

The Undersigned of _____ Post Office, County of _____ State of _____, hereby orders of you, subject to all conditions and agreements herein contained, the following described International Motor Truck (or trucks), to be [fol. 68] shipped on or about the — Day of _____ 19—, to

Chassis		Tire Size		Capacity of Truck
Quantity	Model	Wheel	Front Rear Type	Rated Maximum
Cab			Wheels	
	Base		Single	(including
			Duals	Body and
			Single	Load)
			Duals	Tons Lbs.
				Tons Lbs.

Equipment:

Chassis

Model Description of Body and other equipment

For which I (we) agree to pay the total sum of \$ _____
and _____, F. O. B. _____ as follows:

\$ _____ on the signing of this order (and if paid by check,
cashing or depositing the same shall not be considered as
an acceptance of this order), and the remainder of the pur-
chase price to be paid as follows upon delivery or tender
of said truck (or trucks):

Cash \$ _____, Notes \$ _____, Payable _____

and the following described property (give detailed descrip-
tion). One _____ Motor Truck, Model _____, Chas-is No.
_____, Engine No. _____

Then the contract sets out the various provisions as to reser-
vation of title, effect of delinquency in payment of notes,
a provision for warranty, and similar sales contract pro-
[fol. 69] visions. The concluding parts of the contract are
as follows:

"Note: If this order is addressed Order dated this _____
to the International Harvester Company, day of _____, 19____
it is subject to the written acceptance _____ Purchaser
of one of the Branch Managers. Pur- _____
chaser's deposit to be returned if not Order taken by _____
accepted _____"

Accepted _____ at _____

_____, Branch Manager.

33. (a) For the years 1935 and 1936 the Company paid
Gross Income Taxes to the Department of Treasury of
the State of Indiana as shown on the consolidated Gross
Income Tax Returns of the International Harvester Com-

pany and International Harvester Company of America, as follows:

1935			
Wholesale sales	\$4,547,141.98	Wholesale Tax ..	\$11,367.85
Retail sales	\$1,702,563.38		
Exemption	1,000.00		
Net retail sales	1,701,563.38	Retail Tax	17,015.64
		Total taxes	\$28,383.49
1936			
Wholesale sales	\$5,656,701.99	Wholesale Tax ..	\$14,141.76
Retail Sales	2,302,697.82		
Exemption	1,000.00		
Net Retail Sales	2,301,697.82	Retail Tax	23,016.98
		Total taxes	\$37,158.74

[fol. 70] (b) Of the above amounts, the Company has claimed refund only of the sum of \$996.84 for 1935 and of \$648.84 for 1936, or \$1,645.68 in all, which sums are included in the amount sued for herein, as Classes E and F, as set out in paragraph 34 hereof.

34. The taxes for which the Company claims refund, and has sued herein to recover, were paid on the gross receipts derived from the following classes of sales:

Class A. (a) Sales by branches of the Company located outside the State of Indiana to dealers and users located in the State of Indiana. By "user" is meant the consumer who buys at retail. The goods in this class were shipped from branches or general transfer houses or factories of the Company outside Indiana to the purchasers inside Indiana. The sales in this class were made on orders solicited in Indiana by representatives from branches outside Indiana, or on orders received by mail by the branches outside Indiana from the purchasers in Indiana. The orders were all accepted by branches outside Indiana. The sales proceeds were received by the branches outside of Indiana which made the sales.

(b) The sales in Class A consist of the following:

1935			
Wholesale sales	\$995,943.79	Tax	\$2,489.86
Retail sales	40,650.53	Tax	406.50

	1936		
Wholesale sales.....	1,146,366.05	Tax.....	2,865.92
Retail sales.....	41,461.33	Tax.....	414.61
[fol. 71]			
	1935 and 1936 Combined		
Wholesale sales.....	2,142,309.84	Tax.....	5,355.77
Retail sales.....	82,111.86	Tax.....	821.12
Totals.....	2,224,421.70		\$6,176.89

It is agreed that of the wholesale sales in Class A, the amount of \$717,079.68 in 1935 and the amount of \$825,382.80 in 1936, or a total amount of \$1,542,462.48 for the two years 1935 and 1936, are shipments of goods in carload lots, and that such sales are not subject to the Indiana Gross Income Tax, and that the Company is entitled to a refund of the tax on such sales, and that the judgment in this case shall so provide, unless such tax is sooner refunded.

The amount of taxes on such sales which the parties now agree are not subject to the Indiana Gross Income Tax and to which the Company is entitled to refund are for the year 1935 \$1,792.70 and for the year 1936 \$2,063.46, or a total of \$3,856.16.

Class B. (a) Sales by branches of Plaintiff located outside Indiana to dealers and users located outside Indiana, who took delivery of the goods themselves in the State of Indiana. The orders in this class were solicited from purchasers residing outside Indiana by representatives from a branch of the Company located outside Indiana, or were received by mail at branches outside Indiana from purchasers located outside Indiana. The orders and contracts were all accepted by branches located outside Indiana. The sales in this class were motor trucks manufactured at the Fort Wayne Works. The sales proceeds were received by the branches outside of Indiana which made the sales.

[fol. 72] (b) In the case of wholesale sales in this class, the contract or order provides for the goods to be shipped according to the terms of the contract, as set out in paragraphs 30 and 32 hereof. However, notwithstanding such provision for shipment in the contract or order, if the dealer desires to take delivery of the truck at Fort Wayne himself and to undertake transportation of the truck to its

destination in another state, it is the custom for him to notify the Company to that effect at the time he desires delivery, and the Company will comply with the dealer's wishes in that respect.

(c) In the case of retail sales in this class, if the user desires to make transportation of the truck to its destination in another state, and for that purpose to take delivery at Fort Wayne, it is the Company's business practice for the contract or order so to state.

The sales in Class B consist of the following:

1935			
Wholesale sales.....	\$118,091.49	Tax.....	\$295.23
Retail sales.....	105,499.26	Tax.....	1,054.99
1936			
Wholesale sales.....	161,528.70	Tax.....	403.82
Retail sales.....	276,588.78	Tax.....	2,765.89
1935 and 1936 Combined			
Wholesale sales.....	\$279,620.19	Tax.....	699.05
Retail sales.....	382,088.04	Tax.....	3,820.88
Totals.....	\$661,708.23	Tax.....	\$4,519.93

The parties now agree that the sales in Class B are not [fol. 73] subject to the Indiana Gross Income Tax, and that the Company is entitled to a refund of the tax on such sales in the total amount of \$4,519.93, and that the judgment in this case shall so provide unless such tax is sooner refunded.

Class C. (a) Sales by branches located outside Indiana to dealers and users residing in Indiana, who took delivery of the goods themselves in Indiana.

(b) The orders in this class were solicited by representatives of branches outside Indiana from purchasers residing in Indiana, or were received by mail by branches outside Indiana from purchasers residing in Indiana. The orders and contracts were accepted by branches outside Indiana. Payments of the sales proceeds were received by branches outside Indiana. The sales in this class were principally of motor trucks manufactured at the Fort Wayne Works, and a small amount of goods manufactured by the Richmond Works, Richmond, Indiana. In the case of whole-

sale sales, if the dealer desires to take delivery of the goods himself, either at Fort Wayne or Richmond, it is the custom for the dealer to notify the Company to that effect at the time he desires delivery, and the Company will make delivery accordingly. In the case of retail sales in this class, if the user desires to undertake transportation of the goods to their destination and for that purpose to take delivery at the factory in Indiana, it is the business practice for the contract or order so to state.

(c) The sales in Class C consist of the following:

1935			
Wholesale sales.....	\$33,833.47	Tax.....	\$84.58
Retail sales.....	33,064.74	Tax.....	330.65
[fol. 74]			
1936			
Wholesale sales.....	\$32,012.50	Tax.....	\$80.03
Retail sales.....	16,075.37	Tax.....	160.75
1935 and 1936 Combined			
Wholesale sales.....	65,845.97	Tax.....	164.61
Retail sales.....	49,140.11	Tax.....	491.40
Totals.....	114,986.08		\$656.01

Class D. (a) Sales by branches of the Plaintiff located in Indiana to dealers and users residing outside Indiana, who came to Indiana and took delivery of the goods themselves in Indiana. In this class the orders were received by representatives from Indiana branches who solicited the purchasers outside Indiana, or were sent by mail to the Indiana branches from purchasers outside Indiana. The orders or contracts were accepted and the sales proceeds were received by the Branch Managers at the branches located within Indiana.

(b) In the case of wholesale sales in this class, the contract or order provides for the goods to be shipped by the Company to the buyer under the provisions set out in paragraphs 29, 30, 31 and 32 hereof. However, if the dealer desires to take delivery of the goods himself at the branch or factory in Indiana, it is the business custom for him to notify the Company at the time he desires delivery that he will come and get the goods himself, and the Company will make delivery accordingly.

[fol. 75] (c) In the case of retail sales in this class, if the user desires to take delivery at the branch or factory in Indiana and to undertake the transportation of the goods to their destination in another state, it is the business practice for the order or contract so to state.

(d) The sales in Class D for the years 1935 and 1936 consist of the following:

1935			
Wholesale sales.....	\$544,902.16	Tax.....	\$1,362.26
Retail sales.....	21,024.71	Tax.....	210.25
1936			
Wholesale sales.....	546,892.24	Tax.....	1,367.23
Retail sales.....	33,182.06	Tax.....	331.82
1935 and 1936 Combined			
Wholesale sales.....	\$1,091,794.40	Tax.....	2,729.49
Retail sales.....	54,206.77	Tax.....	542.07
Totals.....	\$1,146,001.17		3,271.56

Class E. (a) Sales by branches located in Indiana to dealers and users residing in the State of Indiana, where the goods were shipped by the Company from outside the State of Indiana and where the order or contract of sales specified that shipment should be made from a point outside Indiana to the purchaser in Indiana. In these cases the orders were solicited from purchasers residing in Indiana by representatives of Indiana branches, or the orders or contracts were received by mail by Indiana branches. The orders and contracts were accepted by the Branch Manager at branches located within Indiana. Payments of the sales [fol. 76] proceeds were received by branches in Indiana. The sales in this class were of goods manufactured outside the State of Indiana.

(b) The sales in Class E consist of the following:

1935			
Wholesale sales.....	\$194,384.87	Tax.....	\$485.96
Retail sales.....	1,613.60	Tax.....	16.13
Total taxes for Class E for 1935.....			\$502.09

	1936		
Wholesale sales.....	78,297.32	Tax.....	195.74
Retail sales.....	None		None
Total tax for Class E for 1936.....			\$195.74

It is agreed that of the wholesale sales in said Class E, the amount of \$170,958.57 in 1935 and the amount of \$66,409.65 in 1936, or a total amount of \$237,368.22 for both said years 1935 and 1936, were shipments of goods in car-load lots, and that such shipments are not subject to the Indiana Gross Income Tax. It is agreed that the Company is entitled to refund of the taxes on such sales, and that the judgment in this case shall so provide, unless such tax is sooner refunded.

The amount of taxes on such sales, which the parties now agree are not subject to the Indiana Gross Income Tax and to which the Company is entitled to refund, are for the year 1935 \$427.40 and for the year 1936 \$166.02, or a total for the two years 1935 and 1936 of \$593.42.

[fol. 77] Class F. (a) Sales by branches located in the State of Indiana to dealers and users residing in the State of Indiana where delivery was taken by such dealers and users personally outside the State of Indiana. In these sales the orders were solicited in Indiana by representatives from Indiana branches, or were received by mail by the Indiana branches from Indiana customers. The orders or contracts were accepted and the sales proceeds were received by Branch Managers at branches located within Indiana. The sales in this class were of goods manufactured outside the State of Indiana.

(b) More than 90% of the sales in this class consisted of motor trucks manufactured at the Company's plant at Springfield, Ohio, of which the dealers took delivery at the factory, and of goods which the dealers took delivery at the Chicago Transfer House.

(c) In the case of wholesale sales, the orders or contracts provided for the goods to be shipped by the Company, subject to the terms specified in paragraphs 29, 30 and 31 of this Stipulation. However, if the dealer at the time of delivery desires to take delivery of the goods himself at the factory or the Company's Transfer House, it is the business practice for him to notify the Company at the time

he desires delivery that he will take delivery of the goods himself, and delivery is made accordingly.

(d) In the case of retail sales in this class, if the user desires to undertake transportation of the goods to their destination in Indiana and for that purpose to take delivery at the factory or Transfer House, it is the Company's business practice for the order or contract so to state.

[fol. 78] (e) The sales in Class F consist of the following:

1935.			
Wholesale sales.....	\$155,577.87	Tax.....	\$388.94
Retail sales.....	10,581.46	Tax.....	105.81
Total taxes for Class F for 1935.....			\$494.75
1936			
Wholesale sales.....	163,748.05	Tax.....	421.87
Retail sales.....	3,122.55	Tax.....	31.23
Total taxes for Class F for 1936.....			453.10

35. Since the filing of the Complaint in this cause, it has been agreed by and between the parties that the gross receipts described in Class F are subject to the Indiana Gross Income Tax, and that the Plaintiff is not entitled to recover the amount thereof, and the judgment in this case shall so provide.

36. (a) Because of the nature of Plaintiff's products, the sales' demand and sales' possibilities of such products are to a large extent seasonable. For example, planting equipment and accessories are normally sold in the period from November to and including the following June, and harvesting machines and accessories are normally sold during the period from November to and including the following August of each year. The Plaintiff, just prior to and throughout the applicable season in which there would normally be a demand for its products during 1935 and 1936, maintained at each branch in Indiana, and each branch outside Indiana selling to Indiana customers, stocks of the various types of machines and implements marketed in the territorial areas served by such branch, which stocks were [fol. 79] maintained to fill, so far as possible, less than car-load lot orders from its dealers and emergency orders from its dealers in the selling season when the dealers do not

want to wait for shipments from the Factory or transfer house.

(b) The parties estimate that during the years 1935 and 1936 there were stocks of the Plaintiff at its Indiana branches available at the time of the sales to fill 50% of the less than carload lot orders of Indiana purchasers referred to above in this Class A. The goods sold in the manner described in this item 36, amounting to 50% of the Class A less than carload sales, were sold in the normal course of business and in a manner of sale not adopted on account of the Indiana Gross Income Tax or for the purpose of avoiding any tax liability. In each instance in which such goods were sold by a branch outside Indiana, the goods were sold to a buyer residing in a part of Indiana lying in a trade area then, and for many years previous, served by such branch. Each trade area served by a particular branch has been established and maintained for the purpose of serving the residents in such area quickly and economically, and state boundaries were not considered in the establishment of such trade areas.

(c) Though it is estimated that in said 50% of said less than carload Class A transactions the articles sold and delivered by the outside branches could have been found in stock at the time of sale at one or more of the branches in Indiana, nevertheless, since the stock of each Indiana branch is intended only to supply less than carload lot orders received from purchasers in its territory, and such stock is frequently insufficient to take care of all such less than carload lot orders, it follows that over the period of an entire year for the Indiana branches to fill all less than [fol. 80] carload shipments on sales by branches made outside Indiana to Indiana residents, in addition to the less than carload lot orders from purchasers in their own territory, it would be necessary to keep stocks on hand at the Indiana branches far in excess of any stock usually kept on hand and much in excess of the existing storage capacity at the Indiana branches. To fill, by delivery from Indiana branches, orders from purchasers residing in Indiana but residing in the territory of a branch outside Indiana, would eliminate the use of part of the storage facilities then and now existing at such outside branches. Such practice, also, would in many cases involve delay to the customer, since the

branch outside of Indiana is the most convenient point for the storage of goods for buyers in its particular trade area. Such practice, also, would in many cases result in higher freight costs to the buyer as the less than carload lot freight rates from the outside branch to the buyer in its trade area would be less than the rate from the Ind. branch nearest to the buyer, and much less than such rate from an Indiana branch in some distant part of Indiana.

(d) Due to seasonal demands for particular items in different trade areas, it is the most efficient business practice to stock each branch with the items likely to be required there, and it would be undesirable and uneconomical to stock any branch with items not called for by purchasers within its area. It is desirable to stock a branch, whether it be in Indiana or outside Indiana, with items wanted by the buyers in its trade area so that they may see the thing which they wish to buy and may have prompt delivery.

37. (a) The defendants reserve the right to object to [fol. 81] the materiality to the issues in this case of the facts set out in paragraphs 27 and 28, and plaintiffs reserve the right to object to the materiality to said issues of the facts set out in paragraph 36 and 40 (j).

(b) It is hereby mutually stipulated and agreed that the Court shall take judicial notice of all of the Regulations issued by the Gross Income Tax Division of the Department of Treasury of the State of Indiana.

(c) It is agreed that any party or parties hereto may offer further evidence at the trial of this cause.

38. Pursuant to audit by the Indiana Gross Income Tax Division of the Indiana Gross Income Tax Returns of the Company, the said Gross Income Tax Division served the Company with notices and Demands for additional Indiana Gross Income Taxes for the calendar years 1935 and 1936 in the total amount, including interest to June 7, 1938, of \$25,737.92, divided as follows:

1935 tax	\$8,965.70	Interest	\$2,617.98	Total	\$11,583.68
1936 tax	12,077.00	Interest	2,077.24	Total	14,154.24

Grand Total

\$25,737.92

39. On June 15, 1939 the Company paid said amount of \$25,737.92 to the Indiana Gross Income Tax Division, under written protest, however, which written protest reserved the right to make claim for refund and to sue to recover the amount so paid, setting out as grounds thereof that the additional assessments were illegal, unconstitutional and void because levied on transactions in interstate commerce, on business done outside the State of Indiana, and on gross income derived from sources outside the State of Indiana, [fol. 82] and therefore unauthorized, illegal and unconstitutional under the Commerce Clause and the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, and under the provisions of the Indiana Gross Income Tax Act.

40. (a) On August 7th, 1939, the Company and said International Harvester Company of America filed their joint Claim for Refund with said Indiana Gross Income Tax Division, claiming refund of the following portions of the taxes and interest so paid under protest on June 15, 1939, pursuant to said Notices and Demands.

Additional tax for 1935	\$6,234.32
Interest on additional tax for 1935	1,820.42
Refund of tax and interest claimed for 1935	\$8,054.74
Additional tax for 1936	\$8,390.07
Interest on additional tax for 1936	1,443.09
Refund of tax and interest claimed for 1936	\$9,833.16

(b) Said Claim for Refund divided the taxes on which refund was claimed into Classes A, B, C and D, covering the taxes paid under protest on June 15, 1939.

(c) Said Claim for Refund also included a demand for refund of taxes paid in the class designated herein as Class E for the calendar year 1936 in the amount of \$195.74; and the class designated herein as Class F for the year 1936 in the amount of \$453.10.

(d) The total amount claimed on said Claim for Refund of August 7, 1939, therefore, was \$18,536.74.

[fol. 83] (e) Prior to the claim filed on August 7, 1939, the Company on January 30, 1939 had filed its Claim for Refund for the year 1935 for the class designated herein

as Class E in the amount of \$502.09, and for the class designated herein as Class F in the amount of \$494.75.

(f) The taxes for said Classes E and F, both for 1935 and 1936, were paid at the regular times the returns were due, and no demand was made on the Company for said taxes and no interest was included in the amounts paid by the Company.

(g) Below is given the amounts of tax for which recovery was asked in the Complaint in this cause for each of the classes of sales, and interest thereon for Classes A, B, C and D as claimed in said Claim for Refund:

		Tax		Interest	
Class A	1935.....	\$2,896.36		\$845.74	
	1936.....	3,280.53		564.25	
			\$6,176.89		\$1,409.99
Class B	1935.....	1,350.22		394.27	
	1936.....	3,169.71		545.19	
			4,519.93		939.46
Class C	1935.....	415.23		121.24	
	1936.....	240.78		41.42	
			656.01		162.66
Class D	1935.....	1,572.51		459.17	
	1936.....	1,699.05		292.23	
			3,271.56		751.40
Class E	1935.....	502.09			
	1936.....	195.74			
			697.83		
Class F	1935.....	494.75			
	1936.....	453.10			
			947.85		
[fol. 84]					
Total Taxes.....		\$16,270.07		Interest	\$3,263.51

By this Stipulation, the amounts of tax are reduced to the following amounts for each of said classes:

		Tax originally claimed	Eliminated by stipulation	Net Amount in contest	Remaining
Class A	1935.....	\$2,896.36	\$1,792.70	\$1,103.66	
	1936.....	3,280.53	2,063.46	1,217.07	\$2,320.73
Class B	1935.....	1,350.22	1,350.22		
	1936.....	3,169.71	3,169.71		
Class C	1935.....	415.23		415.23	
	1936.....	240.78		240.78	656.01
Class D	1935.....	1,572.51		1,572.51	
	1936.....	1,699.05		1,699.05	3,271.56
Class E	1935.....	502.09	427.40	74.69	
	1936.....	195.74	166.02	29.72	104.41
Class F	1935.....	494.75	494.75		
	1936.....	453.10	453.10		
with interest.....					\$6,352.71

(h) Said Claims for Refund, in the total amount of \$16,270.07 taxes and \$3,263.51 interest, total \$19,533.58, were denied on August 9, 1939 by said Gross Income Tax Division, and Plaintiffs were so notified in writing.

(i) Plaintiffs then gave notice to said Defendants of their intention to bring, and have brought this suit, pursuant to the statutory provisions pertaining thereto, to recover said taxes in the total amount of \$19,533.58.

(j) The gross receipts involved in this suit for refund were not taxed, and were not used as the measure of any tax assessed, in any other jurisdiction than the State of Indiana, and no tax has been paid by the Plaintiffs to any [fol. 85] taxing jurisdiction other than the State of Indiana upon these identical gross receipts or which was measured by them.

Dated July 5, 1941.

(Signed) Warrack Wallace, Edward R. Lewis, Attorneys for Plaintiffs, George N. Beamer, The Attorney General; Joseph W. Hutchinson, Deputy Atty. Gen.; Joseph P. McNamara, Deputy Atty. Gen., Attorneys for Defendants.

[fol. 86] The Plaintiffs, in order to maintain the issues in their behalf, offered and introduced the following evidence, to-wit:

Mr. Wallace (Atty. for Plfs.):

The Plaintiffs Exhibit B is offered in evidence, being depositions of John L. McCaffrey and A. T. Woller. No objection.

Thereupon, Exhibit B, was introduced and read in evidence and is in the following words and figures, to-wit:

PLAINTIFFS' EXHIBIT "B"

IN THE SUPERIOR COURT OF MARION COUNTY

[Title omitted]

[fol. 87]

DEPOSITIONS

Depositions of John L. McCaffrey and A. T. Woller, witnesses produced and sworn on behalf of the plaintiffs in the above-entitled cause, notice being waived by agreement

of the parties, before Roy de Vincent Cox, a notary public for DuPage County, Illinois, on Tuesday, June 18th, A. D. 1940, at the hour of 1:30 o'clock in the afternoon, in the offices of International Harvester Company, Harvester Building, 180 North Michigan Avenue, Chicago, Illinois.

APPEARANCES:

[fol. 88] Mr. Edward R. Lewis, and Mr. Warrack Wallace, Appeared for plaintiffs; Mr. Joseph P. McNamara, Appeared for defendants.

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Mr. McNamara: Before the beginning of the deposition, may we have this stipulation: That objections be made at the time the questions are asked without elaboration as to the grounds of the objection, and that the objection may be renewed and amplified at the time the deposition is read in evidence.

That will save time in taking the depositions.

Mr. Lewis: We will stipulate to that. Will the notary please swear the witness.

JOHN L. McCaffrey, a witness, called on behalf of the [fol. 89] plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Lewis:

Q. Will you state your name, residence and occupation?

A. John L. McCaffrey; residence, 6138 Kenwood Avenue, Chicago; vice president in charge of sales of the International Harvester Company.

Q. You were recently elected vice president, I believe?

A. Yes, on June 1st.

Q. Before that, you were sales manager, were you?

A. Director of sales for the United States and Canada.

Q. When did you start in with the Harvester organization? I believe you started with the International Harvester Company of America?

A. Yes, sir.

Q. In what year?

A. 1909.

Q. The International Harvester Company of America was a wholly-owned subsidiary of the International Harvester Company?

A. That is correct.

Q. Where did you first start in with the Harvester Company?

A. Cincinnati, 1909.

Q. In Cincinnati. How long did you stay in Cincinnati?

A. From 1909 to 1923.

Q. Then where did you go?

A. I came to Chicago.

Q. And have been here ever since in the general offices?

A. Yes, sir.

Q. What were your duties at Cincinnati, Mr. McCaffrey?

A. Well, I started there in the warehouse, warehouse [fol. 90] man, salesman, blockman and assistant branch manager.

Q. Just what do you mean by blockman?

A. A blockman has a certain specified territory of a number of counties, with a number of dealers that he oversees and directs.

Q. You say it was in 1923 that you came to Chicago?

A. Yes, sir.

Q. And in Chicago, what have your duties been?

A. Assistant district manager, district manager, domestic sales manager, director of sales and vice president, in charge of sales.

Q. There are five districts in the United States, is that right?

A. That is right.

Q. And you were district manager, that means you were in charge of one of those districts?

A. At different times, of two districts.

Q. Mr. McCaffrey, at the time you worked for the Harvester Company in Cincinnati, did the International Harvester Company of America distribute goods that were manufactured by the International Harvester to the nation?

A. Yes, sir.

Q. When did it start to do that?

A. 1935.

Q. Who took over the business then?

A. The International Harvester Company.

Q. At the end of 1935?

A. As I recall it, yes.

Q. Will you describe briefly the method of handling sales of the Harvester Company? Take first the general line, and by the general line is meant what.

A. Farm implements and tractors.

[fol. 91]. Q. Very well. Take the general line. How does the International Harvester Company distribute its general line of goods to the public?

A. Well, first, we have 109 various branch houses located in various places in the United States that handle the products through approximately eight thousand dealers, or something more than that; the goods are sold direct to the dealers and the dealers sell to the farmers. That is the way it is done in the general line.

Q. You say you had 109 branch houses in 1935 and 1936?

A. Yes, sir.

Q. And the branch houses would sell the farm implements, the tractor line, the general line to the dealers at wholesale and the dealers would then sell direct to the public?

A. That is correct. We have about 109 company stores, retail outlets of our own, located in various places which are operated by the company.

Q. Trade retail stores?

A. Trade retail stores.

Q. What are those called?

A. McCormick-Deering stores, eight selling companies.

Q. What do you mean by "selling companies"?

A. That is a regularly organized and capitalized company entirely separate corporation from the company. The Harvester Company owns a certain proportion of the shares of stock.

Q. A controlling share of the stock?

A. A controlling share of the stock.

Q. There are not any of those direct sales companies left?

A. There are still eight.

Q. How many were there in 1935 and 1936?

A. In 1935 and 1936, there were eight. I am wrong about [fol. 92] that previous answer. I think probably there are only four left.

Q. But there were eight in those years, 1935 and 1936?

A. Yes, sir.

Q. What was the purpose of establishing these company-owned retail stores, these McCormick-Deering stores, instead of having independent dealers?

A. The first reason was that in certain locations over the United States there were good towns, good markets for our goods where we were not able to find a satisfactory dealer at the time; and rather than allow the customers to go without service and ourselves to go without the opportunity of selling the goods, we opened our own business; and those stores from time to time have been sold to individuals and new stores have been started and sold again; so that is a sort of revolving retail outlet.

Q. How many of these McCormick-Deering stores were there in Indiana in 1935 and 1936?

A. Ten.

Q. Under whose supervision is the McCormick-Deering store?

A. That is under the supervision of the branch manager at the branch house in whose territory they are located.

Q. If a McCormick-Deering store makes a sale to a farmer—you have one of those stores at Seymour, Indiana?

A. Yes, sir.

Q. Say a farmer comes in and pays cash for the article, does the store have full control over the sale?

A. The McCormick-Deering store manager at the store.

Q. But if the farmer wants to buy an expensive machine and pay part cash and give a note or notes for the balance, who would pass on that credit?

[fol. 93] A. The credit manager at the branch house.

Q. The sale would not be approved until the branch house had approved the credit?

A. Exactly.

Q. But on cash sales, the McCormick-Deering sales manager would have the complete control?

A. Correct.

Q. Where are the general offices of the International Harvester Company?

A. Chicago, Illinois.

Q. And have been here for how long?

A. Since the organization of the company.

Q. What are the chief departments of the company?

A. Well, there is the purchasing department, the manufacturing department, sales, engineering, treasury, legal and accounting departments.

Q. Where are the heads of those departments, where do they have their offices?

A. In Chicago.

Q. In the head office in Chicago?

A. Yes, sir.

Q. Now, Mr. McCaffrey, who determines the change of policy of the company? Who determines, for instance, if the company decides to build a plant in Indianapolis for the manufacture of motors for motor trucks, who decides that?

Mr. McNamara: Of course, we object for the reason it is immaterial, irrelevant and does not tend to prove any material issue in the cause, nor to disprove any defense alleged.

[fol. 94] A. The executive officers of the company in Chicago.

Mr. Lewis:

Q. Who determines the question of the purchase of materials and supplies for the manufacturing plants in Chicago, in Indiana, and other points?

Mr. McNamara: That is objected to for the reason it is immaterial and irrelevant and does not tend to prove any material issue in the cause, nor to disprove any of the defenses alleged.

A. That is all managed and controlled by the purchasing department in their general offices in Chicago.

Mr. Lewis:

Q. And the question of prices at which goods will be sold is determined in the same way?

Mr. McNamara: The same objection, immaterial and irrelevant; does not tend to prove or disprove any material issue in the cause, nor to disprove any defense alleged.

A. That is determined by the executive departments in the general office in Chicago.

Mr. Lewis:

Q. Where do the board of directors meet?

A. In the Chicago general offices.

Q. Now, Mr. McCaffrey, you said, I think, there were 109 branch houses in 1935 and 1936?

A. Yes, that is correct.

Q. Where are the branches that are located in Indiana and were so located in 1935 and 1936?

[fol. 95] A. In Indianapolis, Fort Wayne, Evansville and Terre Haute.

Q. I do not expect you to remember all of the counties, and I am not asking for that much detail, but will you please describe briefly in a general way what the territories of those branches are? What general territories does the Indianapolis branch handle for instance?

A. The Indianapolis branch handles the central and southeast part of Indiana; not completely the southern part but the central and southeastern part.

Q. Does it include any territory outside of Indiana?

A. No.

Q. May I refresh your recollection—didn't it in 1935 and 1936?

A. Yes, it handled Darke County, Ohio.

Q. That was later changed to the Columbus, Ohio Branch?

A. Yes, sir.

Q. Generally, what territory does the Fort Wayne branch handle?

A. The Fort Wayne Branch handles the northeastern part of the State of Indiana and four or five counties in Ohio.

Q. And the Evansville Branch?

A. The southern end of Indiana and part of Kentucky.

Q. Any counties in Illinois?

A. Some counties in Illinois, yes.

Q. What about the Terre Haute territory?

A. Part in Indiana and part in Illinois, the southwestern part.

Q. What branch located outside of Indiana makes sales in Indiana?

A. Kankakee, Cincinnati and Louisville.

Q. Cincinnati has what territory, generally speaking?

A. Part in Ohio, part of Kentucky and five counties in Indiana.

Q. A few counties in the south part of Indiana?

[fol. 96] A. Yes, sir.

Q. And the Kankakee branch has what territory?

A. Part of Illinois, part of Indiana, northwestern corner.

Q. Does the Chicago Motor Truck branch have a territory in Indiana?

A. Yes, Lake County.

Q. What determines in general the location of a branch house city?

Mr. McNamara: To which we object on the ground it is irrelevant and immaterial and does not tend to prove or disprove any of the issues in the cause.

A. The territory of the company's branches has been assigned to them as a result of many years of being in the business. These territories are well established business and economic areas, and correspond to the areas as to local freight distribution and commerce as adopted and established by other lines of business and trade associations.

Q. Now, Indianapolis has a branch, of course?

A. Yes, sir.

Q. And there has been a branch there for many years?

A. That is correct.

Q. There has been a branch at Cincinnati for a good many years, also?

A. That is correct.

Q. What is the reason that Indianapolis was picked as a branch house city?

A. Because Indianapolis is a natural trading center for a certain radius of miles of counties and territory surrounding Indianapolis.

Q. What makes Indianapolis a trading center?

[fol. 97] Mr. McNamara: I object to that on the ground it is irrelevant and immaterial and calls for a conclusion of the witness.

Mr. Lewis: The witness has established that he has had many years of experience. Go ahead.

A. I think the natural trade established a city rather than the city establishing the trading center. That is the point I have always held. If it was not a natural trading center, it would not be there. The fact that people have come there over a period of years, a good many years, has made it a city. That is how it came to be a city.

Q. Now, Mr. McCaffrey, based on your experience since 1909 in the sales department of the Harvester Company

and the International Harvester Company of America, I will ask you this: Suppose the company should make a rule that all business in Indiana, that is, all sales to dealers in Indiana, and to customers in Indiana, should be handled from Indiana branches. In other words, suppose they would say that all dealers in southeastern Indiana who now go to Louisville should hereafter go to Evansville: that dealers in Southern Indiana, now in the territory of the Louisville branch, must deal with the Evansville branch; that dealers in Kentucky who are now in the territory of the Evansville branch must go to Louisville; that dealers in Southern Illinois, now in the territory of the Evansville branch, must go to an Illinois branch; that dealers in Indiana in the territory of the Kankakee branch must go to Terre Haute, and that dealers in Illinois, in the territory of [fol. 98] the Terre Haute branch must go to Kankakee. What would be the effect of that on the business of the company?

Mr. McNamara: To which we object, on the ground it is irrelevant and immaterial and does not tend to prove or disprove any of the material issues in this cause, or disprove any of the defenses alleged, and also that it calls for a conclusion of the witness.

A. Well, in the first place, it would raise the cost of distribution of our goods and make it inconvenient for our customers; and it would make the cost of goods both to the dealer and the farmer more expensive than now.

Also, it would not work, if you did that, for the reason that you cannot bring a customer with his money where you want him, because he will go where he wants to go. In other words, it is not a natural place for him to do business. So naturally he will not go there. So we would have a constant turmoil of trying to direct people where they should go instead of the natural place where they will go.

Mr. Lewis:

Q. Would that, in your opinion, carry out not only with the dealers, but with the farmers who go to the dealers? Would the farmers be, in your opinion, inclined to follow their natural bent and go to the dealer they wanted to go to no matter what the company did?

Mr. McNamara: That is objected to as incompetent, irrelevant and immaterial, since we are not here concerned [fol. 99] with the commerce, if any, of the dealers, but only the commercial activities of the International Harvester Company itself.

A. Yes, I am sure they would.

Mr. Lewis:

Q. Suppose a farmer out in Western Indiana who had formerly dealt with a dealer in Illinois, even if the company should decide that the branch in Indiana would sell to the dealer, the farmer might still go to his dealer in Illinois?

Mr. McNamara: That is objected to as irrelevant and immaterial; does not prove or disprove any of the material issues in this cause or disprove any of the defenses alleged, and also calls for a conclusion of the witness.

A. That is true.

Mr. Lewis:

Q. I think from October 12, 1911 to December 1, 1922, on account of some Kentucky litigation, the branch in Louisville was removed to New Albany, Indiana?

A. Yes, sir.

Q. Are you familiar with the effect that had on the company's business?

A. As far as I can recall it at this late date, the branch which was finally established across the river from Louisville was never a satisfactory location, so far as our customers were concerned, and they continually complained of having to go across the river there for the purpose of getting our goods.

[fol. 100] Q. How about the Indiana customers and dealers?

A. The Indiana people, so far as I know, they may have been partially satisfied, but it was not as convenient for them, or at least they told us it was not, as when they went to Louisville.

Q. Mr. McCaffrey, I understand that each branch house has a warehouse to keep goods for sale?

A. That is correct.

Q. Does the company keep at each branch house in Indiana a full line of its entire stock?

A. They keep a complete variety but not a complete stock.

Q. Will you please elaborate on that a little bit?

A. That means that the variety might be an individual machine of each kind that is salable in that territory; it is there for show to the customers, but a complete showing means that sufficient stock is not carried to supply all the trade in the territory.

Q. Have you any figures as to the total number of kinds of machines that the company has for sale?

A. I do not have that, but those figures are available.

Q. Do I understand your previous answer, Mr. McCaffrey, to mean that a branch might keep several different kinds of ploughs, but not each variety of each kind of plough?

A. It would probably keep a sample of each variety but not a stock sufficient to supply the entire area.

Q. It would keep a sample but could not keep, in your opinion, a complete stock?

A. That is correct.

Q. Do you know whether the price books of the company list 2,327 different sizes and kinds of agricultural implements?

A. I know it is somewhere around that number. I do not know the exact number.

[fol. 101] Q. Do you know the number of kinds of motor trucks we have?

A. No.

Q. Well, whatever the number of the different kinds and sizes of agricultural implements and machines, if it were such a number as 2,327, you mean that the branch house would not keep each one of those 2,327 kinds and sizes?

A. No, because each of those are not all salable in the same branch house territory.

Q. Suppose that the company should try to keep in each warehouse a stock of their full line, what would be the result? Would it require a greatly enlarged warehouse space?

Mr. McNamara: That is objected to as immaterial, calls for a conclusion of the witness and does not tend to disprove any of the issues.

A. It would require a much larger warehouse, considerably larger inventories and would add to the cost of distribution and the selling price of the goods.

Mr. Lewis:

Q. It would add to that materially?

A. Materially, I would say.

Q. Is there sufficient warehouse room at the manufacturing plants of the company to warehouse all the stock of finished goods they have made?

A. No.

Q. What is the policy of the factory, as fast as they get finished goods, what do they do with them?

Mr. McNamara: That is immaterial, calls for conclusion of the witness and does not tend to prove or disprove any [fol. 102] of the issues.

A. The goods are shipped to the transfer houses, branch houses, or to the dealers.

Mr. Lewis:

Q. The factories do not have room to keep all their finished stock, do they?

Mr. McNamara: The same objection, immaterial, calling for a conclusion of the witness and does not tend to prove or disprove any of the issues.

A. Not the entire stock, no.

Mr. Lewis:

Q. They keep it moving out to the transfer houses and branch houses?

A. Yes, sir.

Q. What are the transfer houses and where are they located?

A. The transfer houses are located at Minneapolis, Minnesota? Council Bluffs, Iowa, Kansas City and Chicago, Illinois. The transfer houses are located, first, for the purpose of getting the benefit of through traffic or rail to points beyond those transfers, and the stocks carried there after coming from the factory as an intermediate supply for the branch houses and the dealers.

Q. Then when a branch gets an order for a machine, it does not have in stock at the branch house, what does that branch do with the order in the normal course of business?

Mr. McNamara: The same objection, incompetent and immaterial, calling for conclusion of the witness and does not tend to prove or disprove any of the issues.

[fol. 103] A. The branch house would send the order to Chicago, and the distribution department would then determine the speed at which the goods must get there; they usually try to deliver them from the factory or one of these transfer houses.

Mr. Lewis:

Q. And that is the company's name, "transfer house," but it would not be incorrect to call them supply depots, is that right?

A. That is what they are, but we know them as transfer houses in the company.

Q. In the fall of the year, what is the business practice of the branches of the company with respect to their relations with the dealers for the ensuing business year?

A. Some time between October 31st and January 1st, we proceed to make a contract with our dealers for the succeeding year.

Q. In connection with that contract, the dealer may give an initial order for goods?

A. Yes, sir.

Q. In all cases?

A. Yes, he does, I would say in practically all cases, in a greater percentage of the cases.

Q. It might be that a dealer would have a pretty bad year and would have goods left over from the year before; what then?

A. If he has a sufficient inventory to carry on another year, we would write a contract to represent us the following year without additional goods.

Q. In your opinion, is that a rare case?

A. That is a very rare case.

Q. Suppose a dealer signs up with the company, say in [fol. 104] November of 1939, for example, and he makes an initial order, and along in February he tells the company he cannot take that initial order and wants to beg out of it; what do we do in that case?

A. If it is a good reason, we would give him an opportunity to do that. I mean, in a great many parts of the country, crop conditions are never known until sometime later in the year, after the contract is written, and if they have a total crop failure, as frequently happens in the northwestern part of the country, we naturally would not require the dealer to take a stock of goods that were unsalable for that reason.

Q. And that is because we would be loading them up with unsalable stuff and would be hurting the dealer and not helping ourselves?

A. That is it, exactly.

Q. Well, in case he does not give a good reason for the cancellation of the order, what then is our attitude?

A. Our contract gives us the privilege of shipping on the shipping date that is specified in the contract.

Q. Later on, Mr. McCaffrey, in the course of the year the dealer may send in additional orders for goods?

A. That is correct.

Q. And they go to the branch house, do they?

A. Yes, accepted at the branch.

Q. Does the dealer give a shipping order at that time with each additional order of goods?

A. That is right.

Q. Does he tell in the shipping order how he wants the goods shipped, where from?

Mr. McNamara: This is all immaterial and irrelevant, [fol. 105] calls for a conclusion of the witness and does not tend to prove or disprove any of the issues.

A. Subsequent orders are usually brought about by additional demands for goods, and they are usually shipped in the quickest way from whatever point available. For instance, ordinarily a man will specify in his contract a number of sizes of a certain given item needed for that season, and those goods are shipped. If the demand grows beyond that, he will send in a subsequent order which would naturally say, "Ship at once", because he is up to the season; and he can and does specify where the goods shall be shipped from, and also usually specifies in there that the goods are needed promptly and should be shipped in the quickest way.

Mr. Lewis:

Q. Is it customary for dealer to designate in his shipping order that he wants the goods shipped from the factory or transfer house?

Mr. McNamara: That is objected to as immaterial and irrelevant.

A. That frequently happens.

Mr. Lewis:

Q. It is a fact, is it not, Mr. McCaffrey, that the freight on shipments to a dealer from the factory or transfer house will be less and considerably less than if the goods are shipped to him from the branch house?

Mr. McNamara: To which we object as irrelevant and immaterial, does not tend to prove or disprove any issues in this cause, and calls for a conclusion on the part of the [fol. 106] witness as to whether or not the freight charges would or would not be great.

A. That is usually the case.

Mr. Lewis:

Q. Has it been your experience in your service with the company that the dealers to a large extent do designate they want the goods shipped either from the transfer house or factory instead of the branch house in order to save freight?

Mr. McNamara: To which we object, for the reason the witness has answered and stated that they wanted it shipped the quickest way, usually and this question would tend to bring out evidence to rebut what the witness has stated heretofore.

A. In car load lots, the dealer will always expect his goods to come from the factory or transfer house. In less than carload lots it does not make much difference to him where it comes from, and he usually specifies the branch house.

Mr. Lewis:

Q. When he has got a car load shipment, is it generally the custom of the dealer to ask for shipment from the transfer house?

Mr. McNamara: That is objected to as immaterial and irrelevant and calling for a conclusion of the witness, and does not tend to prove or disprove any of the issues in [fol. 107] this cause.

A. The factory or the transfer house.

Q. How about deliveries of motor trucks? The company has two motor truck plants, one at Fort Wayne, Indiana, and one in Springfield, Ohio?

A. Yes.

Q. And a good part of the delivery of motor trucks is done by drive-away?

A. Yes, sir.

Q. Drive-away by the company?

A. Drive-away by the company and by the customer, or by the dealer.

Q. By customer, you mean the consumer?

A. Yes, the user.

Q. Is it your experience that dealers usually will go to the Fort Wayne motor plant at Fort Wayne, and the Springfield plant at Springfield, whichever is more convenient to them, and then drive away the motor trucks they purchase in order to save expense?

Mr. McNamara: That calls for a conclusion of the witness as to why they do it.

A. They do that very frequently.

Mr. Lewis:

Q. If the dealer does not go to either Fort Wayne or Springfield to get the truck, how does the company deliver it to him, by freight or by drive-away?

A. The greater percentage of the trucks are delivered by drive-away.

Q. Does the company turn these over to the drive-away company?

A. Yes, sir.

Q. And makes a specified charge for that?
[fol. 108] A. A specified charge.

Q. In case the delivery is made from the branch house, the drive-away is made from the branch house, is there an additional charge for handling at the branch house?

A. At the branch house, there is an additional charge on the motor truck for assembling, handling and servicing, any trucks that go out through the branch house.

Q. Does the company's instructions permit the sale by a branch to a dealer in the territory of another branch?

Mr. McNamara: That is objected to as immaterial and irrelevant, and not tending to prove or disprove any of the issues in this cause.

A. No.

Mr. Lewis:

Q. Have you ever heard of a sale being made by a branch to a dealer located in the territory of another branch?

Mr. McNamara: The same objection immaterial and irrelevant, and not tending to prove or disprove any of the issues.

A. I don't recall it, except for one reason, there might be a shortage of stock in one branch house, and the goods would be taken from another branch house, but the actual sale would not be made there, while the delivery would be from some other branch.

Mr. Lewis:

Q. Supposing a dealer would want a machine, for instance, who was in the Cincinnati territory, and the Cincinnati branch would be out of stock and the Evansville branch might have it. The sale would be a Cincinnati sale?

[fol. 109] Mr. McNamara: The same objection incompetent and immaterial, not tending to prove or disprove any of the issues in the cause.

A. Yes, sir.

Mr. Lewis:

Q. But that would be very rare, would you say?

A. Yes, very rare unless there was a considerable shortage of goods.

Q. Suppose a consumer would go to a branch in a territory outside of the territory in which the customer is located for an item, would that branch make the sale?

A. They would transfer the sale to the branch in the territory in which the customer was located.

Q. Are such sales usual or frequent?

Mr. McNamara: The same objection, immaterial and irrelevant, not tending to prove or disprove any of the issues, or to disprove any defense alleged.

A. They are not usual and they are not unusual. They happen occasionally; for instance, at state fairs, or occasions of that kind where farmers might come in from a radius of some miles, come to the fair and buy.

Mr. Lewis:

Q. In case the branch did not have an article that the dealer wanted, the ordinary method would be to fill that from the factory or transfer house?

Mr. McNamara: Objected to as immaterial and irrelevant.

A. If it was available. If not, he would probably try to get the stock from some branch that did have it available:

[fol. 110] Mr. Lewis: I will ask the reporter to mark this map as Plaintiffs' Exhibit 1, for identification.

(Map marked as requested, Plaintiffs' Exhibit 1, for identification.)

Mr. Lewis:

Q. I show you this map, which has been marked as Plaintiffs' Exhibit 1 for identification, being entitled, "International Harvester Company-owned branches. Sales and service locations," and I will ask you what that is a map of?

A. A map of the various branch house territories of the entire United States; sales and service locations are designated by either a square dot or a round dot.

Q. The round dot is the branch house?

A. The branch house.

Q. And the square dot designates motor truck sales and service?

A. Yes, sir, or company stores.

Q. The territory in Indiana is handled by the branch in Indianapolis, that is correct?

A. Yes, sir.

Q. In the center?

A. Yes, sir.

Q. And Louisville in the southeast?

A. In the southeast.

Q. And Cincinnati?

A. The southeast corner; Terre Haute in the southwest corner; Kankakee in the northwest corner and Fort Wayne in the northeast corner; Evansville in the southwest; Chicago in the northwest corner, on motor trucks only (indicating on map).

Q. And this branch at Fort Wayne handles the northeast corner of Indiana and a few counties in Ohio?

[fol. 111] A. That is correct.

Q. Do you believe this map correctly shows the sales branches of the International Harvester Company in Indiana and doing business in Indiana?

Mr. McNamara: I object to that as calling for a conclusion of the witness.

A. I do.

Mr. Lewis: I will offer Plaintiffs' Exhibit 1, for identification, in evidence, and will ask the notary and the witness to identify it with their initials.

(Whereupon, Plaintiffs' Exhibit 1 for identification, was offered in evidence, and is attached hereto and returned herewith.)

Mr. Lewis: Will the reporter please mark this map as Plaintiffs' Exhibit 2, for identification?

(Map marked as requested, Plaintiffs' Exhibit 2, for identification.)

Mr. Lewis:

Q. I show you Plaintiffs' Exhibit 2, for identification, and will ask you what that is.

A. This is a key or a map of the key distribution areas as prepared by The Traffic World.

Q. Will you please look at that map and tell us what are the trade distribution areas marked for the State of Indiana?

Mr. McNamara: That is objected to as immaterial and irrelevant.

A. They are very similar to our own trade areas. For instance the Fort Wayne trade area as shown here is for the northeast corner, going over into Ohio for a few counties.

Cincinnati has a trade area here which goes over into [fol. 112] Indiana for a few counties.

The Louisville trade area as shown here goes over into Indiana and a part of Kentucky.

Evansville is shown as having part of Kentucky, part of Indiana and part of Illinois.

The Terre Haute trade area, part of Indiana and part of Illinois.

Kankakee is not shown as a trading area here but however Danville is and that is shown as part of Illinois and part Indiana.

This also shows the Chicago area as coming down and taking in part of Indiana. It is very similar to our own setup.

Mr. Lewis:

Q. In your opinion, Mr. McCaffrey, based on your experience in the selling organization of the Harvester Company since 1909, does this map indicate the trade areas in the Indiana district?

Mr. McNamara: To which we object on the ground of immateriality and irrelevancy, and the additional ground that it does not tend to prove or disprove any of the issues in this case.

A. I should say that it does.

Mr. Lewis: We now offer in evidence Plaintiffs' Exhibit 2 for identification, in evidence.

Mr. McNamara: We object to the reception in evidence of Plaintiff Exhibit 2 on the ground it is irrelevant and immaterial, and does not tend to prove or disprove any of the [fol. 113] material issues in this cause, or disprove any of the defenses alleged.

Second, that it is not a public document; third, that it is hearsay evidence of an undisclosed witness not subject to cross examination.

(Whereupon, Plaintiffs' Exhibit 2 for identification was offered in evidence as Plaintiffs' Exhibit 2, and is attached hereto and returned herewith.)

Mr. Lewis:

Q. Mr. McCaffrey, I hand you an atlas of wholesale grocery trading areas, issued by the United States Depart-

ment of Commerce, and will call your attention to a map in the back of that report and will ask you how that is entitled.

A. Wholesale grocery trading areas.

Q. How do the areas in it show up, how are they marked out on this map?

Mr. McNamara: I object to that as incompetent and immaterial.

A. Again, they are very similar to ours. Indianapolis, as you will notice, handles Central Indiana; Fort Wayne, Northwestern Indiana and part of Ohio; Cincinnati, the southwestern part of Ohio, part of Kentucky and part of Indiana; Terre Haute, part of Indiana, extending over into Illinois; Evansville has part of Kentucky, part of Indiana and extends into Illinois; Louisville, part of Kentucky, extending into Indiana.

[fol. 114] Mr. Lewis:

Q. May I ask you if you are quite right about Terre Haute? Doesn't that mean that Indianapolis takes over there?

A. Perhaps so, Indianapolis comes over near Illinois, and also coming out of the Chicago area into Northwestern Indiana.

Q. This is Fort Wayne (indicating), the center of the trading area here, that stops at the Ohio line on the east, I believe?

A. That may be correct.

Q. South Bend has the trading area in between the Chicago and Fort Wayne area?

A. Yes, sir.

Mr. Lewis: I will ask that the map just referred to be marked as Plaintiffs' Exhibit 3, for identification, and I will now offer Plaintiffs' Exhibit 3 for identification in evidence as Plaintiffs' Exhibit 3.

(Marked for identification.)

Mr. McNamara: The defendants object to the introduction in evidence of Plaintiffs' Exhibit 3 on the ground it is irrelevant and immaterial; does not tend to prove or disprove any material issue in the case nor to disprove any defense alleged.

For the further reason, it does not appear that the trading areas with reference to a grocery company would necessarily be the same as those with respect to an agricultural machinery business.

[fol. 115] (Whereupon, Plaintiffs' Exhibit 3, for identification, was so offered in evidence, and is attached hereto and returned herewith.)

Mr. Lewis: You may cross examine.

[fol. 116] Cross-examination.

By Mr. McNamara:

Q. Mr. McCaffrey, these branch-houses located in Indiana, there is some stock of goods kept on hand, isn't there?

A. That is correct.

Q. Can you tell us, just generally, what would be stocked in the general line in the branch house, say, at Fort Wayne?

A. Do you mean the amount of stock, or the kind of goods.

Q. Both.

A. The amount would be very hard for me to tell you, but the kind of goods would not be so hard. For instance, at Fort Wayne is carried, first, tractors; and then all machinery that is applicable to the planting, cultivating and harvesting of corn; for the planting, cultivating and harvesting of wheat; for the planting, cultivating and harvesting of soy beans, and other small grain.

Q. There probably would be enough in quantity to handle all of the business that might be expected in, say, a month's time, is that about it?

A. I should say that would depend upon the demand and the season. I do not know that I could answer that question.

Q. As I get it, the stock would be up at certain seasons of the year, and then go off as the season progresses?

A. That is the way it is.

Q. That would be true generally of all the other branches in Indiana. They carry about the same stock, perhaps with the exception of the Evansville branch, which might have something else?

A. No, it is very similar.

Q. You said that shipments are made usually from transfer houses or from factories, but that under unusual condi-

tions there would be some shipments made from other [fol. 117] branches. That is true, is it?

A. That is true.

Q. That is where one branch has not had as good an experience in getting rid of stock as its neighboring branch?

A. No. That might be the answer but, on the other hand, it might be the availability of the goods or for one reason or another.

Q. Oh, I see. In other words, that means that the dealer who would give this subsequent order might want the goods in a hurry and he could be served quicker from the other branch?

A. Yes, or it might be available from no other place.

Q. On these additional or subsequent orders that you have described, time is very important, is that right?

A. That is usually correct.

Q. Now, just calling your attention to the testimony which you gave with regard to the additional charge which is made at branch houses when they handle trucks. You said there was an additional charge for assembling, handling and servicing?

A. Yes.

Q. What is meant by the servicing?

A. Well, perhaps I had better explain the whole thing, the assembling, handling and servicing.

When a truck is ordered and taken direct from the factory, it is usually ordered with the correct body, with the correct tires and cab for the particular use for which the user has bought it. Our trucks in stock at the branch houses are usually shipped in separately, the chassis, cab and body. Then, when the customer comes in, whatever he might need for his use is assembled for him, and the cost [fol. 118] of doing that at the branch house is an additional charge, as against doing it in the regular assembly at the factory. That is the assembling.

The handling is usually bringing the trucks, for instance, from storage. We may have this truck in storage a mile and a half from the service station, and it is up to the service station to get it ready for this assembly. Then before it gets into the hands of the user, the servicing part is to give it a final tuneup and inspection.

Q. That would probably include grease and oil?

A. Not particularly, because they are usually oiled at the factory, but the tuning up of the carburetor, the checking of the valves and various things, smoothing out the motor and putting the truck in proper running condition, that is the servicing.

Q. Are there any warehouses in Indiana at all? Does each branch have a warehouse in conjunction with it?

A. That is right.

Q. Aside from that, there are no other warehouses in Indiana?

A. There are no other transfer houses, no.

Q. The McCormick-Deering stores are operated independently of the branch house, are they?

A. They are operated under the supervision of the branch house, but on the same basis as a dealer.

Q. And they carry the same stock?

A. The same stock, about the normal dealer's stock.

Mr. McNamara: I guess that is about all.

Mr. Lewis: I should like to ask Mr. McCaffrey a few questions in addition.

[fol. 119] Redirect examination.

By Mr. Lewis:

Q. If a dealer wants a car load lot of goods, where could he normally get them from?

A. From the factory.

Q. Or the transfer house?

A. Or the transfer house.

Q. Not from the branch house?

A. Not ordinarily, no.

Q. Is it true, Mr. McCaffrey, that the branch house's function is to supply the dealers with less-than-carload lots, and those who in the selling season need additional goods and cannot wait to get the goods from the factory or the transfer house?

A. Generally, that is true, for subsequent orders or for fill-ins.

Q. I will put it this way: If a dealer came to the branch at Fort Wayne or Evansville, Indianapolis or Terre Haute, and he wanted a sufficient number of tractors to make a carload lot, that would come from the factory or transfer house?

A. Yes, sir.

Q. But if he wanted one machine, if the branch had it, he would get it from the branch; is that correct?

A. True. That has something to do with the availability of the goods, or rather, the availability of the goods has something to do with that.

Mr. Wallace: I think we had better make it a little more clear as to the stocks that are normally carried at a branch house. In the proposed stipulation of facts the price books [fol. 120] list 2,327 different sizes and kinds of agricultural implements and machines. Now, assuming that that figure is correct, are those different sizes and kinds all carried by a branch house?

A. They are not carried by any branch house, that number.

Q. And of the 8,194 items of agricultural implements and machines in the different sizes and kinds, does the branch house ever purport to carry all of those items?

A. Never.

Mr. McNamara: What does that figure represent?

Mr. Wallace: The total of the different kinds and sizes of attachments for agricultural implements, machines and motor trucks.

Q. So then it is not quite the fact that a branch house carries enough of an inventory to supply a month's business of all kinds and sizes of items, is it?

Mr. McNamara: That is objected to as immaterial and incompetent.

A. On your figures, which I am not repeating because I do not know what the number is, in that number are machines which are used only in certain territories. For instance, machines used in Texas would be absolutely useless [fol. 121] in Indiana and they are included in this total number you talk about. So in this total number are machines used in Texas, Louisiana, California, which are entirely and completely different from the machines used in Indiana, for instance.

So there would be no necessity or demand for carrying them in an Indiana Branch house.

Mr. Wallace:

Q. Would an Indiana branch house carry all the different sizes and kinds of agricultural implements and machines, and their attachments, which are used in Indiana?

Mr. McNamara: Objected to as irrelevant and immaterial, and calling for a conclusion of the witness.

A. It would not carry them all, but the most usable and most salable goods in the sizes and kinds of machines used in that territory.

Mr. Lewis:

Q. And those it would carry, Mr. McCaffrey, it would carry those most in demand in that territory?

A. That is correct.

Mr. Wallace:

Q. Would that be a small or large proportion of this total number of items?

A. By branches, that would be a small proportion of the total at any one branch house.

Q. Would it be a small or large proportion of the total number of items usable and salable in that particular territory? [fol. 122]

A. It would be a large proportion of the different items used in the territory but a small proportion of the total sales of that territory of those items.

Mr. Lewis:

Q. In other words, if you had, just for illustration, there was 100 kinds of machines that were used in that territory, you might have a sample of each of the machines?

A. Yes, sir.

Q. But not nearly enough to supply the total demand of that territory?

A. That is it, exactly.

Mr. Lewis: I think that is all.

Mr. McNamara: Just a question or two further.

[fol. 123] Recross-examination.

By Mr. McNamara:

Q. But you probably would have some stock of each of the 100 items, wouldn't you?

A. That is correct.

Q. When a dealer gives a subsequent shipping order and asks for delivery in the quickest manner, who determines the point from which the goods are to be shipped?

Q. Well, the dealer would ordinarily say, but that would depend on the size of the order, to start with, whether a car load or less than car load; the dealer would say in the case of a car load, "Ship from factory, or the quickest possible way." That is probably the way the order would read. I have seen many that did read that way.

For less than car load lots, it would be a question of expense of delivery, probably, and would not make much difference whether shipped from the factory or branch, if it was less than car load lot, and the decision would be made at the branch as to which way was the most economical or the quickest way to get it to the dealer.

Mr. McNamara: That is all.

[fol. 124] Redirect examination.

By Mr. Lewis:

Mr. Lewis: Just to make sure we understand each other, on a car load lot or more than a car lot shipment, the dealer would specify he wanted it from the transfer house or factory in a large proportion of the cases?

A. That would be usual.

Q. Because of the saving of freight?

A. Yes.

Mr. McNamara: To which we object that last question, on the ground that it is immaterial and calls for a conclusion as to why the dealer wanted it done that way.

Mr. Lewis:

Q. The dealers do, to a large degree, specify on car lot shipments or more than car lot shipments that they want shipment from the factory or transfer house, and on such shipments there is a material saving in freight?

A. That is correct.

Mr. McNamara: And that is the same instance you have been saying, that the shipping order usually read from the factory, or the quickest way,—I believe is, the language [fol. 125] used, the quickest possible way?

A. The quickest possible way. The dealer then has in mind where the supply of goods may be.

Mr. McNamara: That is right. I believe that is all.

Mr. Lewis: That is all.

(Signed) John L. McCaffrey.

Subscribed and sworn to before me, this 24th day of June, A. D. 1940. (Signed) Roy de Vincent Cox, Notary Public. (Seal Notary Public, Roy de Vincent Cox, Dupage County.)

[fol. 126] Mr. Lewis: Mr. McNamara, I have here a county outline map of Indiana, published by Rand-McNally Company, which I am asking the reporter to mark as Plaintiffs' Exhibit 4, for identification, and ask that it be received as Exhibit 4.

(Marked for identification, as requested.)

Mr. McNamara: I have no objection to the introduction of the exhibit.

(Whereupon, the document marked as Plaintiffs' Exhibit 4, for identification; was offered in evidence as Plaintiffs' Exhibit 4; said document is attached hereto and returned herewith.)

Mr. Lewis: Will the notary please swear Mr. Woller?

A. T. WOLLER, a witness, called on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Lewis:

Q. Will you give us your name, residence and occupation, please?

A. A. T. Woller; residence, Chicago, Illinois; occupation, with the accounting department of the International Harvester Company.

Q. How long have you been employed by the International Harvester Company, or the International Harvester Company of America?

A. Since April of 1913, a period of over 27 years.

Q. And that experience has been in the accounting department?

A. All the service in the accounting department with the International Harvester Company of America and the International Harvester.

[fol. 127] Q. Where did you begin your employment?

A. At the Dubuque, Iowa branch house of the company.

Q. What year was that?

A. 1913.

Q. How long did you stay there?

A. I was at the Dubuque, Iowa branch house from 1913 to 1919, or six years.

The next seven years, with the Nashville, Tennessee house, where I held the position of office manager, and after the service at the Nashville branch I was traveling auditor for one year.

From 1927, up to the present time, I have been in the accounting department, general office of the International Harvest- Company.

Q. In Chicago?

A. At Chicago.

Q. Just explain what are the duties of an office manager, briefly.

A. An office manager is responsible for the accounting procedure at the branch house, and to see that all the transactions are recorded and report made of the business in accordance with the company's policy.

Q. Briefly, what are your duties at present in the accounting department of the International Harvester Company in Chicago?

A. To assist in the supervision of the accounting procedure at branch houses, and particularly to keep the branches informed and issue instructions to branches regarding requirements on the various tax sales laws.

Q. Do your duties include any responsibility for the Indiana gross income tax?

A. It does.

[fol. 128] Q. What do you do in that regard?

A. It is to issue instructions to branch houses as to information required under that law.

Q. Information for what?

A. For tax returns.

Q. Have you been doing that since the enactment of this law?

A. Yes, since 1933.

Q. From 1933 to date?

A. Yes, sir.

Mr. Lewis: Mr. Reporter, will you please mark this document as Plaintiffs' exhibit 5, for identification.

(Document marked as requested, Plaintiffs' Exhibit 5, for identification.)

Mr. Lewis:

Q. Mr. Woller, I hand you herewith Plaintiffs' Exhibit 5, for identification, and ask you to state what that exhibit is.

A. It is a comparison of freight charges to Indiana dealers, showing the freight from factory to dealer's town, freight from Chicago transfer to dealer's town, and freight charges for shipment from branch.

Q. In what?

A. In the year 1936.

Q. Was this exhibit prepared under your supervision?

A. It was.

Q. How did you get the figures? Take on this exhibit, the first item you have, the branch at Fort Wayne, Indiana, dealer's town at Marion, Indiana. "10-foot tractor grain binder." That was made at the factory in Chicago. Where did you get the weight?

A. From the company's price schedule and contract.

Q. And the amount of freight from factory to the dealer's [fol. 129] town, \$4.91. Where did you get that?

A. That is computed on the base of freight rate furnished by the traffic department.

Q. Of the International Harvester Company?

A. Of the company, yes.

Q. And the freight from Chicago to dealer's town, where did you get that figure?

A. All the amounts on this statement were based on the freight rate furnished by the traffic department of the Harvester Company.

Q. And the same for shipment from the branch, \$9.61, in that case?

A. Yes, sir.

Q. And that applies to all the other items on the exhibit, on all the various machines listed there?

A. Yes, on the basis of those freight rates.

Q. And these are the freight rates that were in effect in 1936?

A. Yes, sir.

Q. Will you explain that note "A" at the bottom?

A. In 1935 and 1936 company absorbed the freight on car lot shipments of tillage implements from factory to dealer's town.

Q. What is meant by "tillage implements"?

A. That would be ploughs, disc harrows, cultivators, corn planters, etc.

Q. The note is that the company absorbed the freight from factory to dealer's town on car lot shipments?

A. Yes, sir.

Q. Explain note B, "Includes freight from factory, (or Chicago, whichever is less) to branch plus handling charge at branch and freight from branch to dealer's town."

[fol. 130] A. Well, in 1936 if a dealer took delivery from a branch house, he paid the freight from branch house to destination, and in addition was charged with the car lot rate of freight from factory, or Chicago, whichever was less, to branch house, plus handling charge at the branch.

Q. Anything else?

A. No, that is all.

Q. Now, what does that handling charge at the branch mean?

A. That means partially reimbursing the company for the cost of receiving or unloading the goods, storing and reshipping.

Q. Does it include any service or greasing or lubrication?

A. No, it does not.

Q. It is unloading from the car when it came from the factory, and loading it again on the car when it goes to the dealer's town, is that correct?

A. And also partially covers the expense of storage.

Q. Are the goods contained in wood cases?

A. They are in shipping packages. In other words, they are not assembled; if shipped in car lot, they are shipped to the dealer in the original shipping packages as received from the factory.

Q. In the case of these articles mentioned and shown in the exhibit, to the extent that applies to all agricultural implements, the handling charges does not include any assembly or disassembly, or greasing, lubrication, no loading charge, loading from the branch house to the dealer's town, but a small storage charge?

A. It covers the unloading, storage and reshipping.

Q. Will you explain note C, Mr. Woller?

[fol. 131] A. Note C reads, "Freight from branch to dealer's town. Branch absorbed handling charge and freight from factory to branch on tillage implements in 1935 and 1936."

In 1936, if a tillage implement was shipped from a branch house to the dealer, the only freight the dealer paid was from the branch to the dealer's town.

Q. In other words, take a sample from the exhibit, in the case of F-20 Farmall tractor, which is made at Rock Island, Illinois, the freight on that from the factory at Rock Island, Illinois to the dealer's town—in this case, Marion, Indiana—would be \$9.17; and the freight also from the Chicago transfer warehouse to Marion, Indiana, would be \$9.17; but the freight charges to the dealer if that was shipped to him from the branch, would be \$17.93, which would include the freight from the factory to the branch, from the branch to the dealer's town, plus handling charges at the branch?

Mr. McNamara: We object to that for the reason it is immaterial and irrelevant; does not tend to prove or disprove any material issue in the cause, or disprove any defense; and for the further reason it appears on its face to be a purely hypothetical question, not shown that any such transaction has ever taken place in the years in question.

A. In the case shown on the exhibit here, F-20 Farmall tractor, shipped from branch house, dealer would pay the freight on the basis of freight from factory, or Chicago, whichever was less, to the branch, plus a handling charge, [fol. 132] plus freight from the branch house to the dealer's town.

Mr. Lewis: We offer in evidence Plaintiffs' Exhibit 5, for identification, being a comparison of freight charges to Indiana dealers for the year 1936 of the International Harvester Company.

Mr. McNamara: The defendants object to the introduction in evidence of Plaintiffs' Exhibit 5 and state as its reason the following grounds:

First, it is a self serving document; second, it is not a public document entitled to inspection as such, but a purely private paper; does not purport to exhibit all possible combinations that might exist; fourth, it is immaterial and irrelevant and does not prove or disprove any of the issues in this case.

(Whereupon, Plaintiffs' Exhibit 5, for identification, was offered in evidence as Plaintiffs' Exhibit 5, and is attached hereto and returned herewith.)

Mr. Lewis: I will ask the reporter to mark this document I hand him as Plaintiffs' Exhibit 6, for identification.

(Document marked as requested, Plaintiffs' Exhibit 6, for identification.)

Mr. Lewis:

[fol. 133] **Q.** Mr. Woller, I hand you Plaintiffs' Exhibit 6, for identification, being a document entitled, "Delivery charges for International motor trucks, effective in 1936," and ask you what that exhibit is.

A. It is a comparison of cost of delivery of a motor truck direct from factory to dealer, or customer, compared with cost of delivery from branch house.

Q. Was this exhibit prepared under your supervision?

A. It was.

Q. You obtained the drive-away company's charges in each case, from factory to the dealer's town, and from the branch house to the dealer?

A. Yes, sir, I obtained those rates from the traffic department of the International Harvester Company.

Q. I notice that the exhibit shows, it is taken as an illustration of Fort Wayne deliveries for the C-40 chassis and cab, and Springfield deliveries covering the C-1 chassis and cab. I understand that means C-40 chassis and cab was manufactured at Fort Wayne, Indiana, and the C-1 chassis and cab was manufactured at Springfield, Ohio?

A. That is correct.

Q. If you will refer to that exhibit, to the first illustration, sale by branch at Cincinnati, to dealer in Hamilton,

Ohio, the drive-away company's charge for the drive-away from Fort Wayne works to Hamilton would be \$10.50?

A. That is correct.

Q. And the drive-away company's charge for drive-away from the Fort Wayne works to Cincinnati, where the branch is, would be \$11.50?

A. Yes, sir.

Q. Then you have a handling charge at Cincinnati of \$25?
[fol. 134] A. Yes.

Q. What is the total charge to the dealer in Hamilton, Ohio, if he takes that truck by delivery from Cincinnati?

A. That would be \$36.50.

Q. How does he get the truck from Cincinnati to Hamilton?

A. He drives it away, himself.

Q. Then, in other words, if a dealer got that truck by drive-away from Fort Wayne to his town at Hamilton, the cost would be \$10.50?

A. Yes, sir.

Q. And if from the branch house, it would be \$36.50 and in addition the dealer would have to get that truck driven or drive it himself from Cincinnati to Hamilton?

A. Yes.

Q. What do you mean by the handling charge at Cincinnati?

A. The handling charge represents tuning the motor, cleaning and polishing the truck, changing the equipment and all services necessary to prepare the truck for delivery.

Q. It does not include the cost of different tubes or tires or rims, or anything like that? If the dealer wants a type of tire or rim or tube, or any other appliance that is different from what is on the truck as it comes from Cincinnati, you do not include that?

A. No, it covers servicing only.

Q. It would cover the cost of changing from one tire to another, but not the cost of the tire? That would be an extra charge?

A. Yes, sir.

Q. Is the handling charge on the sale to user or consumer the same as the handling charge on the sale to dealer?

A. It was in 1936.

Q. And in 1935?

[fol. 135] A. Yes, 1935, also.

Q. Now, the same explanation applies to each of the other cases illustrated in Sections A, B, C, D, all the way down to J?

A. It does.

Mr. Lewis: We offer in evidence at this time Plaintiffs' Exhibit 6, for identification, in evidence as Plaintiffs' Exhibit 6.

Mr. McNamara: And the defendants object to the introduction in evidence of Plaintiffs' Exhibit 6 on the grounds that such exhibit is incompetent, immaterial and irrelevant; it is self serving; it is not a public document entitled to introduction as such, but merely a private paper, and does not purport to exhibit all the possible combinations that might exist; and in addition, it calls for a conclusion of the person who prepared it.

(Whereupon, Plaintiffs' Exhibit 6, for identification, was offered in evidence as Plaintiffs' Exhibit 6, and is attached hereto and returned herewith.)

Mr. Lewis: Mr. Reporter, will you please mark this document as Plaintiffs' Exhibit 7, for identification.

(Document marked as requested, Plaintiffs' Exhibit 7, for identification.)

Mr. Lewis:

Q. Mr. Woller, I show you Plaintiffs' Exhibit No. 7, for [fol. 136] identification, which is a table showing the amount of Indiana manufacture and outside manufacture of all goods, except repairs, sold by Indiana branches, and outside branches selling to Indiana customers in 1935 and 1936. Was that exhibit prepared under your supervision?

A. It was.

Q. Did you make inquiry of the Indiana branches and the branches that make sales to Indiana customers of the goods they sold in 1935 and 1936?

A. The information was compiled at the general offices of the International Harvester Company and from reports received from its branch houses.

Mr. McNamara: I am objecting to this line of questioning on the ground it is immaterial and irrelevant, and I

should like to have that objection as to each one of the questions pertaining to this exhibit.

Mr. Lewis: Yes.

Q. Do I understand you, Mr. Woller, to say you asked the Indiana branches and also the branches outside of Indiana which sold to Indiana customers to make report to you of all goods of Indiana manufacture that they sold in 1935 and 1936 to Indiana customers, or to all customers?

A. Sold to all customers of Indiana manufacture.

Q. You asked the Evansville branch, for example, to report all sales they made of Indiana manufacture, out of all their sales, that were of Indiana manufacture, is that correct?

A. Yes, sir.

Q. And the same way with Fort Wayne, Indiana, Indianapolis, Terre Haute, you asked them to check their total sales and report how much of their total sales were of Indiana manufacture?

A. Yes, sir.

Q. How about Cincinnati, Kankakee and Louisville, did they report their total sales, or just sales of Indiana manufacture?

A. Their sales, the same as the branches in Indiana.

Q. Their total sales, how much of their total sales were of Indiana manufacture?

A. Yes, sir.

Q. And the same way with the Chicago Motor Truck?

A. Yes, sir.

Mr. McNamara: I am objecting to all this, it is understood that my objection goes to all these questions on the ground that they are immaterial and irrelevant.

Mr. Lewis: Yes.

Q. Evansville, for example, reported that in 1935 it made \$1,551,148.63 in sales?

A. Yes, sir.

Q. Evansville also reported to you that of those sales, \$207,541.60 were sales of goods of Indiana manufacture, is that what it means?

A. Yes, sir.

Mr. McNamara: To which questions I am objecting as being immaterial and irrelevant.

Mr. Lewis:

Q. And the same way with each one of the items on the exhibit?

[fol.138] A. Yes.

Mr. McNamara: I object to it as incompetent and immaterial.

Mr. Lewis:

Q. You believe that this exhibit correctly shows the amount of Indiana manufacture and sales by the branches concerned?

A. I do.

Mr. Lewis: We offer in evidence Plaintiffs' Exhibit 7, for identification, in evidence as Exhibit 7.

Mr. McNamara: The defendants object to the reception in evidence of Plaintiffs' Exhibit 7, for identification; on the ground that such evidence is immaterial and irrelevant; does not tend to prove or disprove any issue in this case, nor tend to disprove any of the defenses alleged.

That it is a self serving document that it eliminates without reason or explanation repair and replacement of parts.

That it is a conclusion of the person compiling said exhibit, based upon conclusions made by persons at the branches; there is no availability for examination of the persons making the original conclusions as to what was or what was not of Indiana manufacture, such persons [fol. 139] being located in the divers branches represented by said exhibit.

(Whereupon, the document marked as Plaintiffs' Exhibit 7, for identification, was offered in evidence as Plaintiffs' Exhibit 7; said document is attached hereto and returned herewith.)

Mr. Lewis:

Q. Mr. Weller, will you kindly explain why repairs were not included in your computation on this exhibit?

A. Because of the tremendous amount of clerical work involved. The average branch has around 30,000 repair invoices, and it would have been necessary for each of the

branches to analyze each of the invoices to obtain the information pertaining to the repairs or parts.

Mr. Lewis: Please mark this document as Plaintiffs' Exhibit 8 for identification.

(Document marked as requested, Plaintiffs' Exhibit 8, for identification.)

Mr. Lewis:

Q. I hand you, Mr. Wøller, Plaintiffs' Exhibit 8, for identification, and ask you to state what that is?

A. It is a table of sales of all goods, except repairs, in 1935 and 1936 by Indiana branches of International Harvester Company, showing how goods were shipped or delivered..

Q. Was this exhibit prepared under your supervision?

A. It was.

Q. Will you explain the exhibit? Start off there with Evansville and show the amount of sales of goods shipped from the branch house at Evansville or delivery taken by [fol 140] buyer at the branch house in 1935 as \$751,066.17, is that correct?

A. That is correct.

Q. And you have the amount of sales of goods shipped or delivered by common carrier from factories and transfer houses direct to dealers and users, and you show that amount as \$676,145.69?

A. Yes.

Q. And the sales in which the dealers and users took delivery themselves at factories and transfer houses, and you show that as \$123,936.77, or making in all a total sales for Evansville in 1935 of \$1,551,148.63?

A. Yes.

Q. Now, what was the percentage of sales filled by shipment or delivery from the various transfer houses to total sales?

Mr. McNamara: I object to that on the ground it is irrelevant and immaterial.

A. 51.58 per cent.

Mr. Lewis:

Q. And you have carried the same methods out in your figures shown for Terre Haute and Fort Wayne?

A. Yes, sir.

Q. Why have you no figures for Indianapolis branch?

A. Because the records were destroyed at Indianapolis through oversight.

Mr. Lewis: We offer Plaintiffs' Exhibit 8, for identification, in evidence.

Mr. McNamara: The defendants object to the reception [fol. 141] in evidence of Plaintiffs' Exhibit 8, on the ground it is immaterial and irrelevant; that it does not tend to prove or disprove any of the material issues in the case, or disprove any of the defenses alleged; and for the further reason it eliminates repair and replacement parts.

(Whereupon, the document previously marked for identification was offered in evidence as Plaintiffs' Exhibit 8, and is attached hereto and returned herewith.)

Mr. Lewis:

Q. I should like to revert to Exhibit 7, with the permission of Mr. McNamara.

Mr. McNamara: Go ahead.

Mr. Lewis:

Q. Explain Exhibit 7, Mr. Woller, as to the amount of Indiana manufacture and outside manufacture; Do I understand you to say that these figures, total sales of all goods, except repairs, were taken from the regular annual report made by the company?

A. Not of the company but from the branch house.

Q. In other words, it was not a special report prepared at your request?

A. That is correct, prepared from the annual reports furnished by the branch houses.

Q. And you have supervision over those reports?

A. Yes, sir.

Q. And the same way with the sales of Indiana manufacture taken from 1936 annual reports made?

A. Yes, sir.

Q. And not specially prepared for this case?

A. No, from the annual report from each of the branches.

Mr. Lewis: That is all. Any cross examination?

Cross-examination.

By Mr. McNamara:

Q. Mr. Woller, directing your attention to Plaintiffs' Exhibit 5, and specifically directing your attention to Column 8, I will ask you whether or not it is not true that the words, "Freight charges" actually include certain charges which are not precisely for freight?

A. In addition to freight, it only includes a charge for handling of six cents per hundredweight.

Q. And that charge described in Column 8 on Plaintiffs' Exhibit 5 is paid by the dealer to the International Harvester Company?

A. It is.

Q. Plaintiffs' Exhibit 5 deals with what is known as general line goods, that is agricultural implements, is that true?

A. Yes, sir.

Q. And does not include motor trucks or motor vehicles?

A. No.

Q. The motor vehicles and trucks are covered by plaintiffs' Exhibit 6, is that true?

A. Yes.

Q. And there the handling charge includes washing, polishing the truck, changing oil and lubricating the chassis, making necessary checks and adjustments, changing tires, tubes and rims, if required, and installing standard equipment; if required, and all other services necessary to prepare the trucks for delivery from the drive-away to the dealer?

A. That is correct.

Q. And that handling charge referred to on Page 3 of Plaintiffs' Exhibit 6 covers the cost of the oil or lubricating material used in that service?

A. No, it would not.

Q. Just the servicing, itself?

A. Just the servicing, itself.

Mr. McNamara: That is all.

Mr. Lewis: I guess that is all.

(Signed) A. T. Woller.

Subscribed and sworn to before me, this 24th day of June, A. D. 1940. (Signed) Roy deVincent Cox, Notary Public. (Seal.)

[fol. 144]

CERTIFICATE OF REPORTER

I, Roy de Vincent Cox, a notary public authorized by the laws of the State of Illinois to administer oaths, do hereby certify and return that the foregoing are the depositions of John L. McCaffrey and A. T. Woller, of Chicago, Illinois, taken on behalf of the plaintiffs, before me, in the general offices of the International Harvester Company, Suite 1800, 180 North Michigan Avenue, Chicago, Illinois, on Tuesday, June 18th, A. D. 1940, beginning at 1:30 o'clock p. m., and finished the same day.

That said witnesses were first duly sworn by me to tell the truth, the whole truth and nothing but the truth concerning the matters at issue in said cause, and were then examined by counsel and testified as appears in the foregoing questions and answers; that the testimony of said witnesses was by me taken stenographically and transcribed under my direction; that the foregoing is the correct testimony of the said witnesses as given before me at the time and place aforesaid.

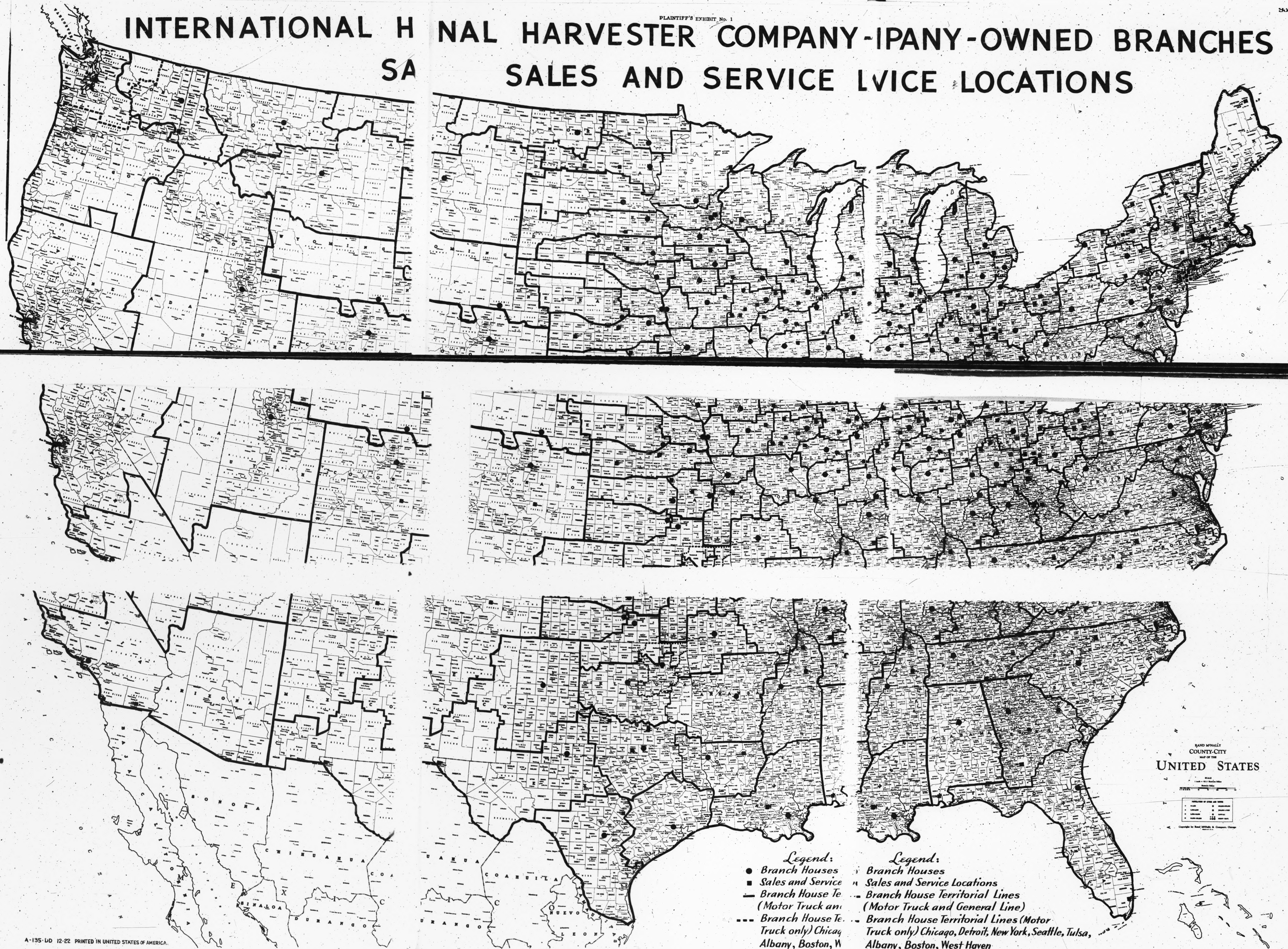
That there were present at the taking of the said depositions, Mr. Edward R. Lewis and Mr. Warrack Wallace, appearing for the plaintiffs, and Mr. Joseph P. McNamara, appearing for the defendants.

I further certify that I am not of counsel or attorney for either of the parties to the above cause, nor interested in the event of said cause.

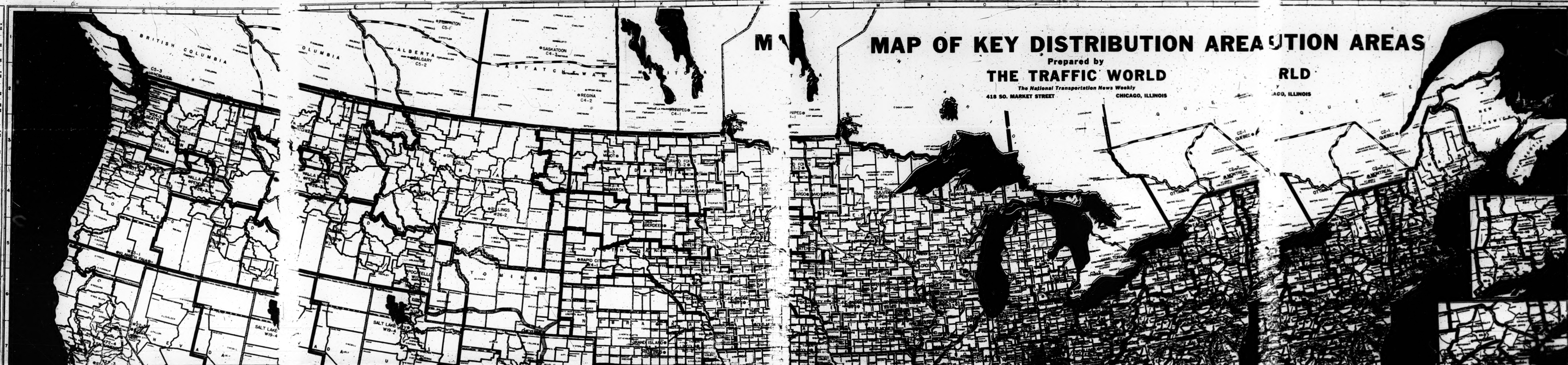
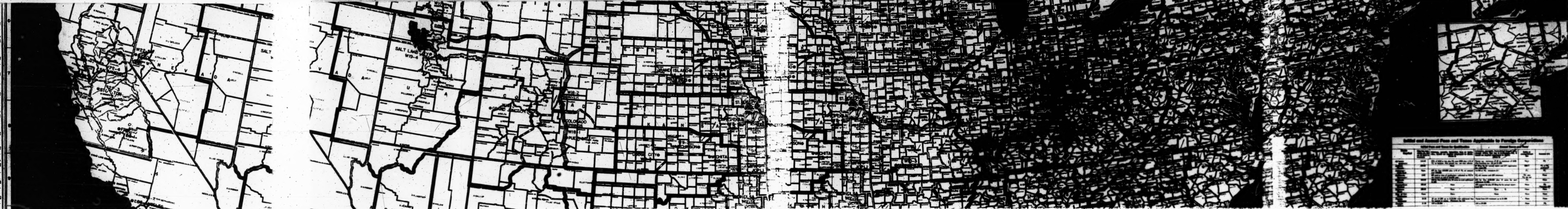
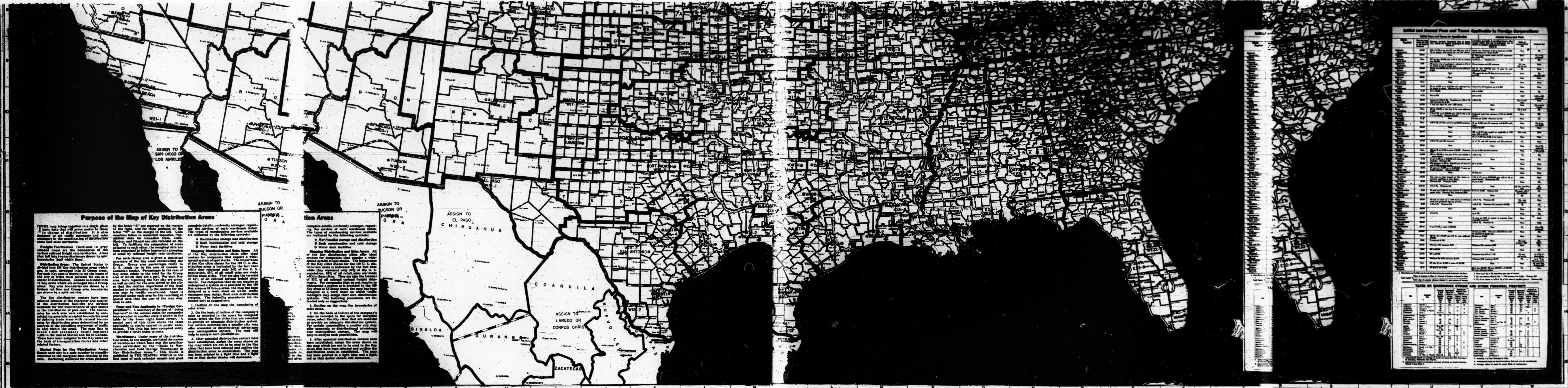
Witness my hand and official seal, this 20th day of June, A. D. 1940.

(Signed) Roy de Vincent Cox, Notary Public, Du-
[fol. 145] Page County, Illinois. (Seal.)

INTERNATIONAL HARVESTER COMPANY-OWNED BRANCHES SALES AND SERVICE LOCATIONS



Market Data for Key Distribution Areas		
For information of the general public, the following are the prices of the 40 most important stocks in the New York Stock Exchange, as of 4:00 p.m. on the day of the report.		
W 1 American Express Co.	W 10 General Electric Co.	W 19 International Business Machines Corp.
120 1/2	120 1/2	120 1/2
W 2 American Telephone & Telegraph Co.	W 11 General Motors Corp.	W 20 International Paper Co.
120 1/2	120 1/2	120 1/2
W 3 American Tobacco Co.	W 12 General Motors Corp.	W 21 International Paper Co.
120 1/2	120 1/2	120 1/2
W 4 American Sugar Refining Co.	W 13 General Motors Corp.	W 22 International Paper Co.
120 1/2	120 1/2	120 1/2
W 5 American Oil Co.	W 14 General Motors Corp.	W 23 International Paper Co.
120 1/2	120 1/2	120 1/2
W 6 American Lumber Co.	W 15 General Motors Corp.	W 24 International Paper Co.
120 1/2	120 1/2	120 1/2
W 7 American Paper Co.	W 16 General Motors Corp.	W 25 International Paper Co.
120 1/2	120 1/2	120 1/2
W 8 American Steel Co.	W 17 General Motors Corp.	W 26 International Paper Co.
120 1/2	120 1/2	120 1/2
W 9 American Coal Co.	W 18 General Motors Corp.	W 27 International Paper Co.
120 1/2	120 1/2	120 1/2
W 10 American Lumber Co.	W 19 General Motors Corp.	W 28 International Paper Co.
120 1/2	120 1/2	120 1/2
W 11 American Paper Co.	W 20 General Motors Corp.	W 29 International Paper Co.
120 1/2	120 1/2	120 1/2
W 12 American Steel Co.	W 21 General Motors Corp.	W 30 International Paper Co.
120 1/2	120 1/2	120 1/2
W 13 American Coal Co.	W 22 General Motors Corp.	W 31 International Paper Co.
120 1/2	120 1/2	120 1/2
W 14 American Lumber Co.	W 23 General Motors Corp.	W 32 International Paper Co.
120 1/2	120 1/2	120 1/2
W 15 American Paper Co.	W 24 General Motors Corp.	W 33 International Paper Co.
120 1/2	120 1/2	120 1/2
W 16 American Steel Co.	W 25 General Motors Corp.	W 34 International Paper Co.
120 1/2	120 1/2	120 1/2
W 17 American Coal Co.	W 26 General Motors Corp.	W 35 International Paper Co.
120 1/2	120 1/2	120 1/2
W 18 American Lumber Co.	W 27 General Motors Corp.	W 36 International Paper Co.
120 1/2	120 1/2	120 1/2
W 19 American Paper Co.	W 28 General Motors Corp.	W 37 International Paper Co.
120 1/2	120 1/2	120 1/2
W 20 American Steel Co.	W 29 General Motors Corp.	W 38 International Paper Co.
120 1/2	120 1/2	120 1/2
W 21 American Coal Co.	W 30 General Motors Corp.	W 39 International Paper Co.
120 1/2	120 1/2	120 1/2
W 22 American Lumber Co.	W 31 General Motors Corp.	W 40 International Paper Co.
120 1/2	120 1/2	120 1/2

[illegible][illegible][illegible][illegible]

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PLAINTIFFS EXHIBIT No. 5

International Harvester Company

Comparison of Freight Charges to Indiana Dealers

Year 1936

Branch	Dealers Town	Type of Machine	Location of Factory	Weight of Machine	Freight from Factory to Dealers Town	Freight from Chicago Transfer to Dealers Town	Freight Charges for Shipment from Branch
Fort Wayne, Ind.	Marion, Ind.	10 ft. Tractor Grain Binder	Chicago, Ill.	2,135 lbs.	\$4.91	\$4.91	\$9.61 (B)
		1½ H.P. LA Engine	Milwaukee, Wis.	175 lbs.	.40	.40	.79 (B)
		F-20 Farmall Tractor	Rock Island, Ill.	3,985 lbs.	9.17	9.17	17.93 (B)
		5 ft. 16 in. Disk Harrow	Rock Falls, Ill.	400 lbs.	None (A)	None (A)	.64 (C)
		No. 8 2-Fur. 14 in. Little Genius Plow	Canton, Ill.	854 lbs.	None (A)	None (A)	1.37 (C)
Indianapolis, Ind.	Kokomo, Ind.	10 ft. Tractor Grain Binder	Chicago, Ill.	2,135 lbs.	4.70	4.70	10.03 (B)
		1½ H.P. LA Engine	Milwaukee, Wis.	175 lbs.	.39	.39	.82 (B)
		F-20 Farmall Tractor	Rock Island, Ill.	3,985 lbs.	8.77	8.77	18.73 (B)
		5 ft. 16 in. Disk Harrow	Rock Falls, Ill.	400 lbs.	None (A)	None (A)	.64 (C)
		No. 8 2-Fur. 14 in. Little Genius Plow	Canton, Ill.	854 lbs.	None (A)	None (A)	1.37 (C)
Indianapolis, Ind.	Columbus, Ind.	10 ft. Tractor Grain Binder	Chicago, Ill.	2,135 lbs.	5.76	5.76	9.82 (B)
		1½ H.P. LA Engine	Milwaukee, Wis.	175 lbs.	.47	.47	.81 (B)
		F-20 Farmall Tractor	Rock Island, Ill.	3,985 lbs.	10.76	10.76	18.33 (B)
		5 ft. 16 in. Disk Harrow	Rock Falls, Ill.	400 lbs.	None (A)	None (A)	.60 (C)
		No. 8 2-Fur. 14 in. Little Genius Plow	Canton, Ill.	854 lbs.	None (A)	None (A)	1.28 (C)

NOTE: (A) In 1935 and 1936 Company absorbed freight on car lot shipments of tillage implements from factory to dealers town.

(B) Includes freight from factory (or Chicago, whichever is less) to Branch plus handling charge at Branch and freight from Branch to dealers town.

(C) Freight from Branch to dealers town. Branch absorbed handling charge and freight from factory to Branch on tillage implements in 1935 and 1936.

All freight charges are computed at car lot rail rate.

(fol. 148]

PLAINTIFFS' EXHIBIT No. 6

Delivery Charges for International Motor Trucks

Effective in 1936

Fort Wayne deliveries cover the C-40 Chassis and Cab.
 Springfield deliveries cover the C-1 Chassis and Cab.

A. Sale by Branch at Cincinnati to Dealer in Hamilton, Ohio.

(a) Driveaway company's charge for driveaway from Fort Wayne Works to Hamilton, Ohio.....	10.50
(b) Driveaway company's charge for driveaway from Fort Wayne Works to Cincinnati.....	\$11.50
Handling charge at Cincinnati.....	25.00

Cost if delivery is made from Branch..... 36.50
 In addition, dealer has cost of driveaway from Cincinnati to Hamilton.

B. Sale by Louisville Branch to Dealer in Elizabethtown, Ky.

(a) Driveaway company's charge for driveaway from Fort Wayne Works to Elizabethtown.....	25.00
(b) Driveaway company's charge for driveaway from Fort Wayne Works to Louisville.....	20.50
Handling charge at Louisville.....	25.00

Cost if delivery is made from Branch..... 45.50
 In addition, dealer has cost of driveaway from Louisville to Elizabethtown.

C. Sale by Kankakee Branch to Dealer in Watseka, Illinois.

(a) Driveaway company's charge for driveaway from Fort Wayne Works to Watseka.....	\$11.00
(b) Driveaway company's charge for driveaway from Fort Wayne Works to Kankakee.....	\$11.00
Handling charge at Kankakee.....	25.00

Cost if delivery is made from Branch..... 36.00

(fol. 149]

In addition, dealer has cost of driveaway from Kankakee to Watseka.

D. Sale by Cincinnati Branch to Dealer in Brookville, Indiana.

(a) Driveaway company's charge for driveaway from Fort Wayne Works to Brookville.....	10.81
(b) Driveaway company's charge for driveaway from Fort Wayne Works to Cincinnati.....	11.50
Handling charge at Cincinnati.....	25.00

Cost if delivery is made from branch..... 36.50
 In addition, dealer has cost of driveaway from Cincinnati to Brookville.

E. Sale by Louisville Branch to Dealer in Salem, Indiana.

(a) Driveaway company's charge for driveaway from Fort Wayne Works to Salem.....	20.50
(b) Driveaway company's charge for driveaway from Fort Wayne Works to Louisville.....	20.50
Handling charge at Louisville.....	25.00

Cost if delivery is made from Branch..... 45.50
 In addition, dealer has cost of driveaway from Louisville to Salem.

F. Sale by Kankakee, Illinois, Branch to Dealer in Fowler, Ind.

(a) Driveaway company's charge for driveaway from Fort Wayne Works to Fowler	11.00
(b) Driveaway company's charge for driveaway from Fort Wayne Works to Kankakee	11.00
Handling charge at Kankakee	25.00

Cost if delivery is made from Branch

In addition, dealer has cost of driveaway from Kankakee to Fowler. 36.00

G. Sale by Evansville Branch to Dealer in Madisonville, Ky.

(a) Driveaway company's charge for driveaway from Fort Wayne Works to Madisonville	21.50
--	-------

[fol. 150]

(b) Driveaway company's charge for driveaway from Fort Wayne Works to Evansville	21.50
Handling charge at Evansville	25.00

Cost if delivery is made from Branch

In addition, dealer has cost of drive away from Evansville to Madisonville. 46.50

H. Sale by Terre Haute Branch to Dealer in Paris, Illinois.

(a) Driveaway company's charge for driveaway from Fort Wayne Works to Paris	13.00
(b) Driveaway company's charge for driveaway from Fort Wayne Works to Terre Haute	13.00
Handling charge at Terre Haute	25.00

Cost if delivery is made from Branch

In addition, dealer has cost of driveaway from Terre Haute to Paris. 38.00

I. Sale by Evansville Branch to Dealer in Jasper, Indiana.

(a) Driveaway company's charge for driveaway from Springfield Works to Jasper	17.00
(b) Driveaway company's charge for driveaway from Springfield Works to Evansville	17.00
Handling charge at Evansville	10.00

Cost if delivery is made from Branch

In addition, dealer has cost of driveaway from Evansville to Jasper. 27.00

J. Sale by Indianapolis Branch to Dealer in Columbus, Indiana.

(a) Driveaway company's charge for driveaway from Springfield Works to Columbus	12.00
(b) Driveaway company's charge for driveaway from Springfield Works to Indianapolis	10.00
Handling charge at Indianapolis	10.00

Cost if delivery is made from Branch

In addition, dealer has cost of driveaway from Indianapolis to Columbus. 20.00

[fol. 151]

NOTE:

Driveaway rates are ordinarily based on a combination two truck delivery. The driveaway rates given above are one-half the pair rates.

The charge for handling at the Branch is made for washing and polishing the truck, changing oil and lubrication of chassis, making all necessary checks and adjustments, changing tires, tubes and rims if required, installing standard equipment, and all other services necessary to prepare the truck for driveaway from the branch to the dealer. The handling charge for delivery to a user, namely the consumer, was the same in 1935 and 1936 as the handling charge on a sale to a dealer.

PLAINTIFFS' EXHIBIT No. 7

Amount of Indiana Manufacture and Outside Manufacture of All Goods, Except Repairs, Sold by Indiana Branches, and Outside Branches, Selling to Indiana Customers in 1935 and 1936.

Branch	1935		Percentage
	Total Sales of All Goods except Repairs	Sales of Indiana Manufacture	
Evansville	\$1,551,148.63	\$207,541.60	13.38%
Fort Wayne	1,984,912.65	294,958.92	14.86
Indianapolis	2,825,247.63	321,310.05	11.37
Terre Haute	1,628,112.11	130,612.91	8.02
Chicago Motor Tr.	1,053,078.04	525,035.58	49.86
Cincinnati	1,567,361.23	330,642.05	21.10
Kankakee	1,846,723.56	152,880.29	8.28
Louisville	1,344,867.82	272,119.48	20.23

[fol. 152]

Branch	1936		Percentage
	Total Sales of All Goods Except Repairs	Sales of Indiana Manufacture	
Evansville	1,839,875.23	264,112.59	14.35
Fort Wayne	2,710,463.51	352,057.25	12.99
Indianapolis	3,735,859.04	462,260.11	12.37
Terre Haute	1,808,904.49	155,190.71	8.58
Chicago Motor Tr.	1,532,845.19	766,501.14	50.01
Cincinnati	2,278,686.11	446,432.90	19.59
Kankakee	2,495,305.52	188,018.98	7.53
Louisville	1,662,504.80	344,258.71	20.71

Branch	1935 and 1936 Combined		Percentage
	Total Sales of All Goods Except Repairs	Sales of Indiana Manufacture	
Evansville	3,391,023.86	471,654.19	13.91
Fort Wayne	4,695,376.16	647,016.17	13.78
Indianapolis	6,561,106.67	783,570.16	11.94
Terre Haute	3,437,016.60	258,803.62	8.32
Chicago Motor Tr.	2,585,923.23	1,291,536.72	49.94
Cincinnati	3,846,047.34	777,074.95	20.20
Kankakee	4,342,029.08	340,899.27	7.85
Louisville	3,007,372.62	616,378.19	20.50

PLAINTIFFS' EXHIBIT No. 8

Table of Sales of All Goods, Except Repairs, in 1935 and 1936 by Indiana Branches of International Harvester Company, Showing How Goods Were Shipped or Delivered.

	Evansville	
	1935	1936
(a) Sales of goods shipped from the branch house or delivery taken by buyer at branch house	\$751,066.17	\$794,642.12
(b) Sales of goods shipped or delivered by common carrier from factories and transfer houses direct to dealers and users	676,145.69	974,397.92
[fol. 153]		
(c) Sales in which dealers and users took delivery themselves at factories and transfer houses	123,936.77	70,835.19
Total sales	\$1,551,148.63	1,839,875.23
Percentage of sales filled by shipment or delivery from factories and transfer houses	51.58%	56.81%

Terre Haute		1935	1936
(a)	Sales of goods shipped from the branch house, or delivery taken by buyer at branch house.....	\$818,940.39	858,325.19
(b)	Sales of goods shipped or delivered by common carrier from factories and transfer houses direct to dealers and users.....	735,906.68	883,649.84
(c)	Sales in which dealers and users took delivery themselves at factories and transfer houses.....	73,265.04	66,929.46
Total Sales.....		1,628,112.11	1,808,904.49
Percentage of sales filled by shipment or delivery from factories and transfer houses....		49.70%	52.55%
Fort Wayne		1935	1936
(a)	Sales of goods shipped from the branch house or delivery taken by buyer at branch house..	1,162,837.47	\$1,327,354.93
(b)	Sales of goods shipped or delivered by common carrier from factories and transfer houses direct to dealers and users.....	701,942.18	1,243,568.25
[fol. 154]			
(c)	Sales in which dealers and users took delivery themselves at factories and transfer houses.....	120,133.00	139,520.33
Total Sales.....		\$1,984,912.65	2,710,463.51
Percentage of sales filled by shipment or delivery from factories and transfer houses....		41.4%	51.00

Indianapolis

Similar figures for the Indianapolis branch are not available, as the records for 1935 and 1936 have been destroyed. And that is all the evidence introduced in this cause.

[fol. 155] Reporter's Certificate to foregoing transcript omitted in printing.

And Be It Further Remembered, That the foregoing Typewritten Transcript of the evidence, so taken and reported, as aforesaid, contains all the evidence given in said cause, with the objections made thereto, the rulings of the [fol. 156] court on said objections, and the exceptions taken thereto; and the same is now embodied in and made a part of a Bill of Exceptions.

ORDER SETTLING BILL OF EXCEPTIONS

And on the 3rd day of July, 1942, and within the time allowed by the Court so to do, the Defendants, tendered this, their Bill of Exceptions, No. 1, which contains the

Typewritten Transcript of the evidence, so taken as aforesaid, and prayed that the same might be signed, sealed and made a part of the record in this cause; which is accordingly done this 3rd day of July, 1942; and the same is ordered to be certified to by the Clerk of this Court, without copying, as a part of the record in this cause.

(Signed) Russell J. Ryan, Judge of the Superior Court of Marion County, Indiana, Room No. 3.

[File endorsements omitted.]

[fol. 157] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

PRÆCIPE—Filed June 4, 1942

To the Clerk of the Marion Superior Court, Room Three:

You are hereby requested by the defendants in the above entitled cause to prepare and properly certify for use on appeal to the Supreme Court of Indiana transcript of the entire record in the above entitled cause, said transcript to include all papers and records, orders, rulings, exceptions, and proceedings made, taken, filed and had in the above entitled cause, including but not in limitation thereof, the following:

First: the summons, complaint and answer;

Second: the findings, judgment and decree of this Court;

[fol. 158] Third: the defendants' motion for a new trial and the ruling thereon;

Fourth: the defendants' prayer for an appeal and the ruling thereon;

Fifth: incorporation therein the transcript of the evidence;

Sixth: all pleadings, papers, orders, rulings and exceptions made and taken in said cause and the judgment rendered thereon;

Seventh: this praecipe and all other proper papers, records, orders, rulings and exceptions.

George N. Beamer, the Attorney General; Joseph P. McNamara, Deputy Attorney General; David I. Day, Jr., Deputy Attorney General; Byron B. Emswiler, Deputy Attorney General, Attorneys for Defendants.

[fol. 159] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 160] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

NOTICE TO CLERK

To the Clerk of the Marion Superior Court, Room Three:

You are hereby notified that the defendants in the above entitled cause will appeal to the Supreme Court of Indiana from the judgment rendered against said defendants by the Marion Superior Court, Room Three, in the above entitled cause on the 29th day of April, 1942.

(Signed) George N. Beamer, The Attorney General,
[fol. 161] (Signed) Joseph P. McNamara, Deputy
Attorney General. (Signed) David I. Day, Jr.,
Deputy Attorney General. (Signed) Byron B.
Emswiler, Deputy Attorney General, Attorneys
for Defendants.

Receipt of the foregoing Notice is acknowledged this 4th day of June 1942.

(Signed) Charles R. Ettinger, Clerk of Marion Superior Court, Room Three.

[fol. 162] IN SUPERIOR COURT OF MARION COUNTY

[Title omitted]

NOTICE TO PLAINTIFFS

To: Edward R. Lewis, Baker, Daniels, Wallace & Seagle,
Attorneys for Plaintiffs, International Harvester Company and International Harvester Company of America, Plaintiffs:

You are hereby notified that the defendants in the above entitled cause will appeal to the Supreme Court of Indiana from the judgment rendered against said defendants in

the Marion Superior Court, Room Three, in the above entitled cause on the 29th day of April, 1942.

[fol. 163] (Signed) George N. Beamer, The Attorney General. (Signed) Joseph P. McNamara, Deputy Attorney General. (Signed) David I. Day, Jr., Deputy Attorney General. (Signed) Byron B. Emswiler, Deputy Attorney General, Attorneys for Defendants.

Receipt of the foregoing Notice is acknowledged this 5th day of June, 1942.

(Signed) Baker, Daniels, Wallace & Seagle, by War-rack Wallace, Attorneys for Plaintiffs.

[fol. 164] IN SUPREME COURT OF INDIANA

[Title omitted]

ORDER OF SUBMISSION—August 27, 1942

Come now the parties by counsel and the court being advised in the premises, submits the above entitled cause under rule 2-14.

IN SUPREME COURT OF INDIANA

MINUTE ENTRIES

And afterwards, to-wit: On the 25th day of September, 1942, the same being the 107th judicial day of the May Term, 1942, of the Supreme Court, the following proceedings were had in said cause, to-wit:

[Title omitted]

Come now the appellants by counsel and file herein their brief (9) and a receipt for a copy from appellees, which brief is in the words and figures following, to-wit: (H. I.)

And afterwards, to-wit: On the 26th day of October, 1942, the same being the 133rd judicial day of the May Term, 1942, of the Supreme Court, the following proceedings were had in said cause, to-wit:

[Title omitted]

[fol. 165] EXCERPTS FROM APPELLEES' BRIEF

Come now the appellees by counsel and file herein their brief (9) and receipt for copy from appellants, which brief

is in the words and figures following, to-wit: (H. I.) Points II, III, IV and V being in the words and figures following:

II

A tax on Class C sales would be a burden on transactions in interstate commerce forbidden by the Commerce Clause.

III

A tax on Class D sales would be a burden on transactions in interstate commerce forbidden by the Commerce Clause.

IV

Class E sales are sales in interstate commerce and to levy a gross income tax on gross receipts therefrom would be to cast an unconstitutional burden on interstate commerce.

V

A tax on appellees' gross receipts from sales in Classes A, C, D or E would be a tax on property and business located outside the State of Indiana and would be in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

[fol. 166]

IN SUPREME COURT OF INDIANA

[Title omitted]

APPELLEES' ASSIGNMENT OF CROSS-ERRORS—Filed October 26, 1942

Appellees, International Harvester Company and International Harvester Company of America say that there is manifest error in the proceedings and judgment below in this, to-wit:

1. The Court erred in adjudging that appellees are not entitled to recover from appellants on account of taxes collected from appellees upon receipts from retail sales in

Class E or upon receipts from wholesale sales in less than [fol. 167] carload lots in Class E, because:

(a) The decision of the Court is not sustained by sufficient evidence.

(b) The decision of the Court is contrary to law.

Wherefore the appellees respectfully pray that the judgment below as to said Class E sales be reversed.

(Signed) Edward R. Lewis, Baker, Daniels, Wallace & Seagle, by Paul N. Rowe, Attorneys for appellees.

[fol. 168] [File endorsement omitted]

IN SUPREME COURT OF INDIANA

MINUTE ENTRIES

And comes now the appellees by counsel and file herein their request for oral argument, which request is in the words and figures following, to-wit: (H.L.)

And afterwards, to-wit: On the 7th day of November, 1942, the same being the 144th judicial day of the May Term, 1942, of the Supreme Court, the following proceedings were had in said cause, to-wit:

[fol. 169] [Title omitted]

Come now the appellants by counsel and file herein their reply brief (9) and receipt for copy of appellees, which brief is in the words and figures following, to-wit: (H.L.)

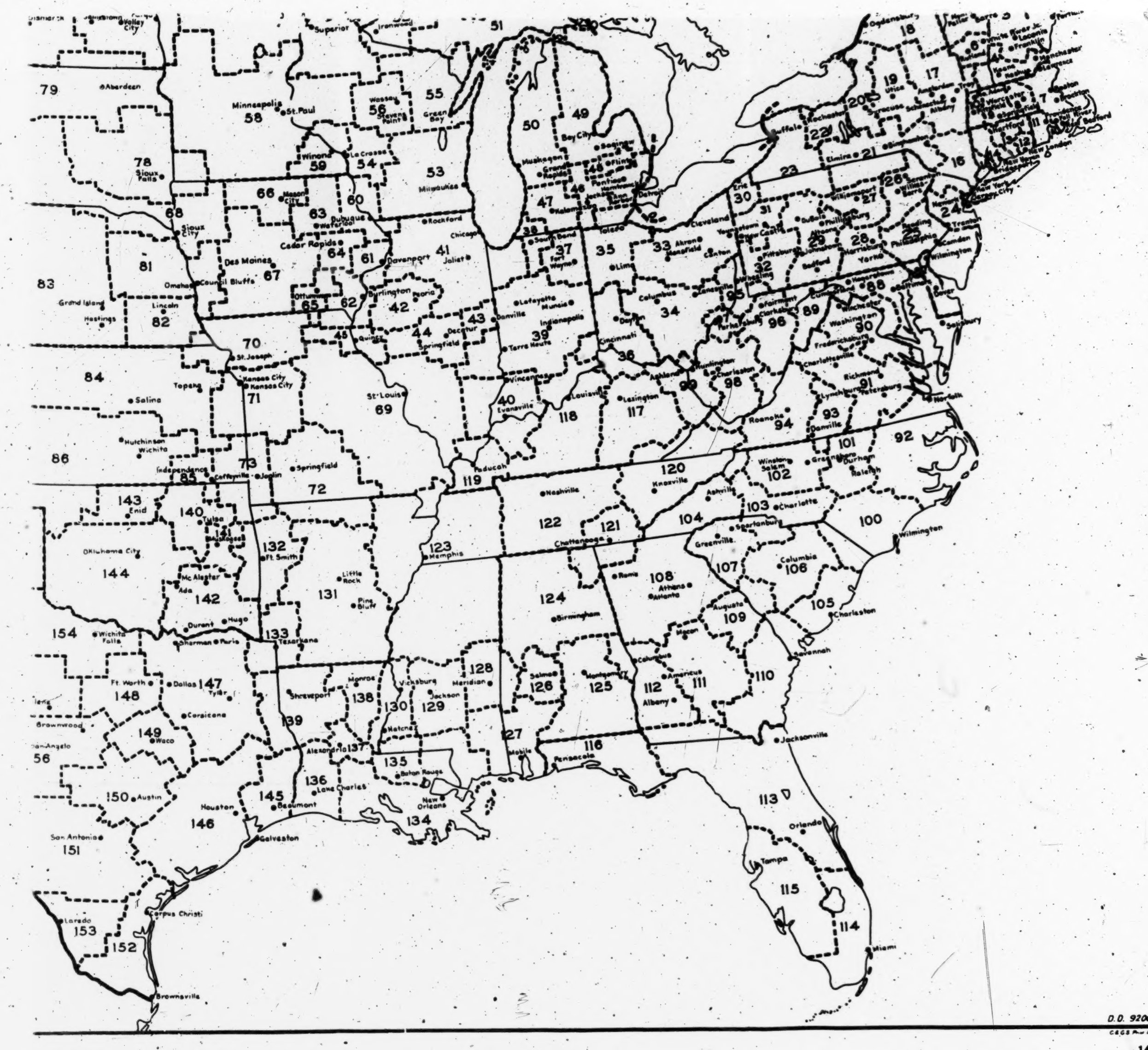
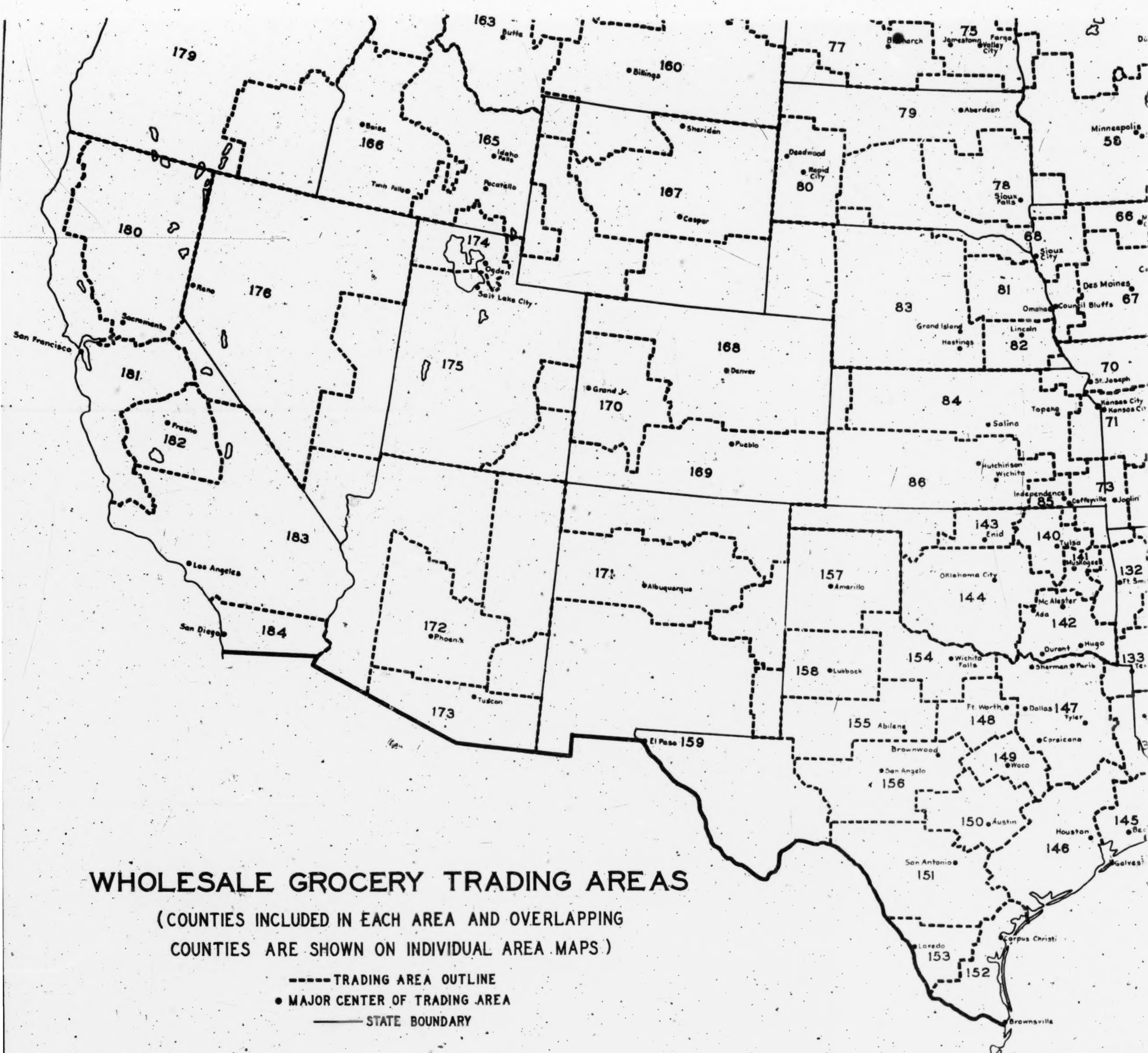
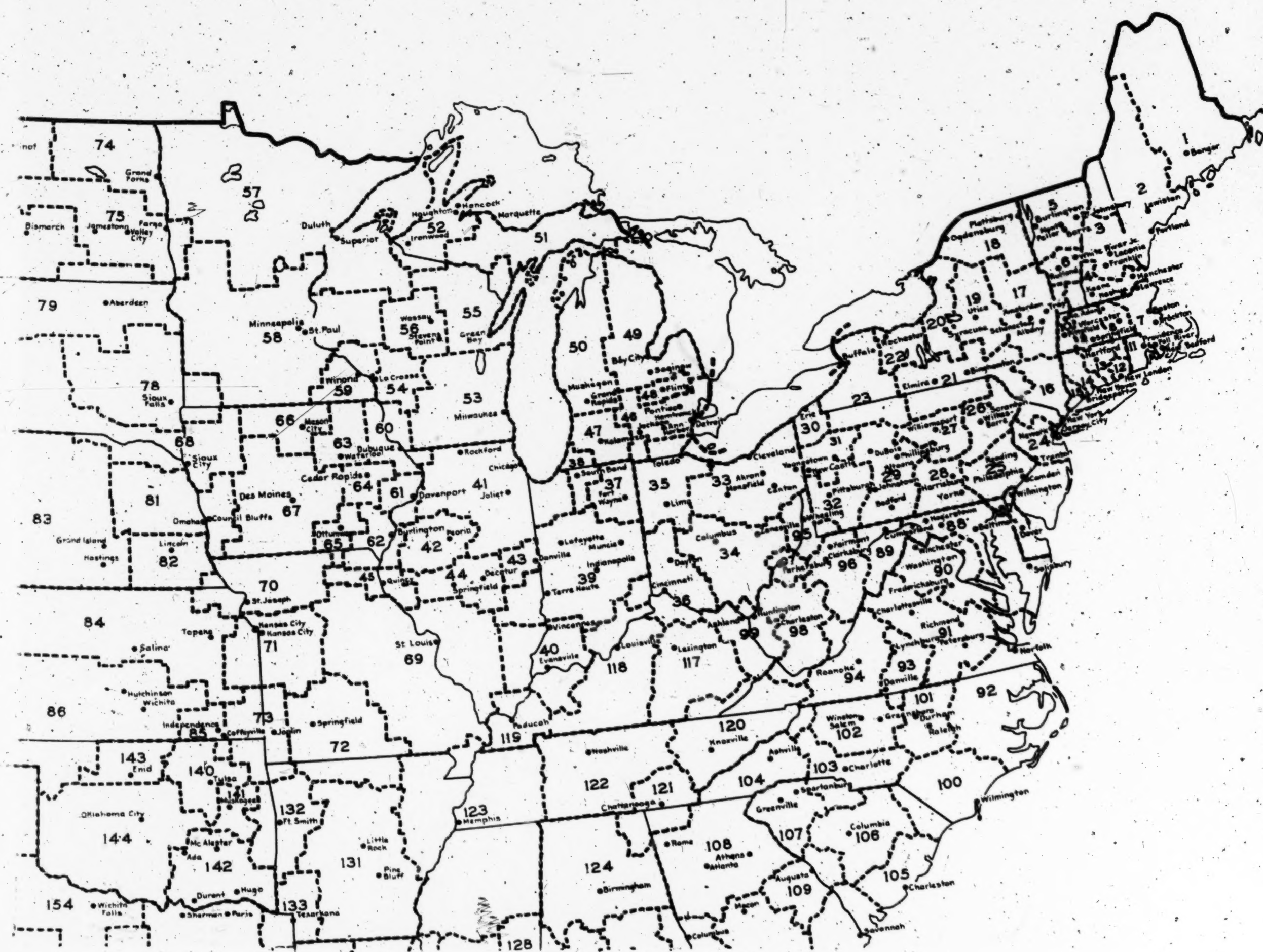
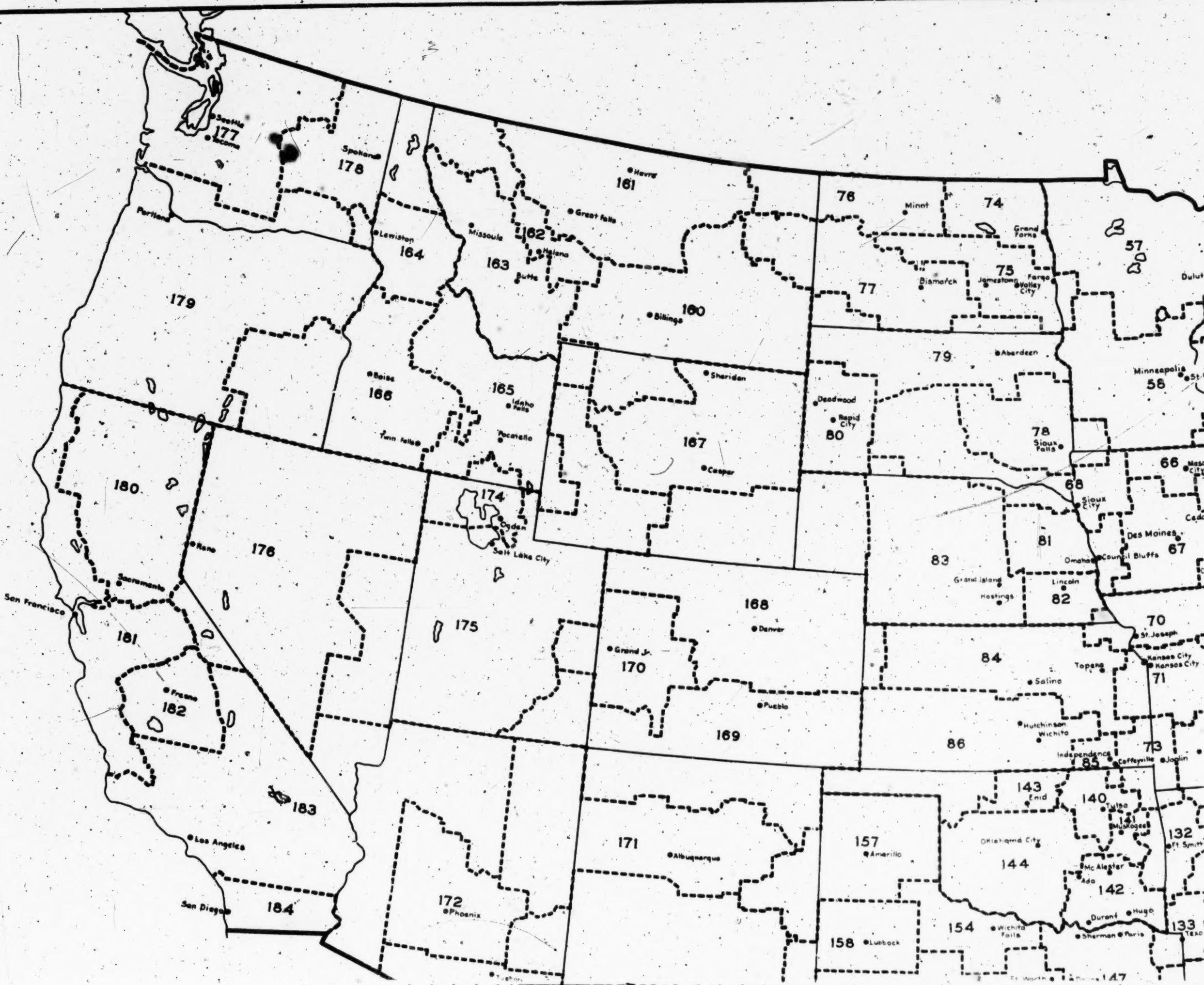
IN SUPREME COURT OF INDIANA

[Title omitted]

ORDER SETTING CAUSE FOR ORAL ARGUMENT

Come now the parties by counsel and the court being advised in the premises, sets the oral argument for December 15, 1942, at two o'clock P. M. with one hour being allowed on each side.

And afterwards, to-wit: On the 24th day of February, 1943, the same being the 81st judicial day of the November



WHOLESALE GROCERY TRADING AREAS

(COUNTIES INCLUDED IN EACH AREA AND OVERLAPPING COUNTIES ARE SHOWN ON INDIVIDUAL AREA MAPS)

- TRADING AREA OUTLINE
- MAJOR CENTER OF TRADING AREA
- STATE BOUNDARY

Term, 1942, of the Supreme Court, the following proceedings were had in said cause, to-wit:

[Title omitted]

[fol. 170] Come now the appellants by counsel and file herein their additional authorities (9) and receipt for copy from appellees, which authorities are in the words and figures following, to-wit: (H.L.)

[fol. 171] IN THE SUPREME COURT OF INDIANA

No. 27767

DEPARTMENT OF TREASURY OF THE STATE OF INDIANA, M. CLIFFORD TOWNSEND, Joseph M. Robertson and Frank G. Thompson, as and Constituting the Department of Treasury of the State of Indiana, Appellants,

v.

INTERNATIONAL HARVESTER COMPANY, AND INTERNATIONAL HARVESTER COMPANY OF AMERICA, Appellees.

Appeal from the Marion Superior Court, Room Three

OPINION—Filed March 19, 1943

SHAKE, J.:

The appellees sued to recover Gross Income Taxes paid to the State of Indiana during the years 1935 and 1936. It was stipulated at the trial that judgment for any amount found due should be in favor of the appellee, International Harvester Company, and that, for the purposes of the case, the appellees should be considered as one party.

[fol. 172] The evidence disclosed, without conflict, that the appellees were corporations organized under the laws of other states but authorized to do business in Indiana. They were engaged in the manufacture of farm implements and in the sale of their products both at wholesale and retail. Manufacturing establishments were maintained at Richmond and Fort Wayne, and selling branches at Indianapolis, Terre Haute, Fort Wayne, and Evansville in this state. There were also numerous manufacturing plants

and sales branches in adjoining states and elsewhere. Each branch served assigned territory and in several instances parts of Indiana were within the exclusive jurisdiction of branch offices located without the state.

The trial court determined the tax liability of the appellees under four factual situations, designated as Classes A, C, D, and E. The nature of these transactions may be stated as follows:

Class A: Sales by branches located outside Indiana to dealers and users located in Indiana. These sales were made on orders solicited in Indiana by representatives of out-of-state branches, or upon mail orders sent from Indiana to out-of-state branches. The orders were accepted by the outside state branch offices and the purchase money paid to them. Without directions from the purchasers, the goods were shipped to them in Indiana from branches, warehouses, or factories located outside Indiana.

Class C: Sales by branches located outside Indiana to dealers and users residing in Indiana. The orders were solicited in Indiana and the customers took delivery to themselves at the factories in Indiana to save time and expense of shipping.

Class D: Sales by branches located in Indiana to dealers [fol. 173] and users residing outside of Indiana, in which the customers came to Indiana and accepted delivery to themselves in this state.

Class E: Sales by branches located in Indiana to dealers and users residing in Indiana, in which the goods were shipped from points outside Indiana to customers in Indiana, pursuant to contracts so providing.

The court below found that the appellees were entitled to a refund of taxes paid upon A, C, and D transactions, but not for those under Class E. By properly assigned errors and cross-errors each of these findings is challenged.

Much of the briefs were devoted to the subject of the interstate attributes of the transactions. We consider these discussions beside the issues. Interstate commerce is not to be exempted from this tax unless it is imposed in such a manner as to lead to the possibility of double or multiple burdens. The Supreme Court of the United States held in *J. D. Adams Mfg. Co. v. Storen* (1938), 304 U. S. 307, 82

L. Ed. 1365, 58 S. Ct. 913, 117 A.L.R. 429, that this tax could not be imposed upon a domestic corporation with its principal office and place of business in this state, for gross income derived from the sale of its products to customers in other states. The court said that, "the exaction is of such a character that if lawful it may in substance be laid to the fullest extent by states in which the goods are sold, as well as those in which they are manufactured. Interstate commerce would thus be subjected to the risk of a double tax burden to which intrastate commerce is not exposed, and which the commerce clause forbids." In *Department of Treasury v. Allied Mills, Inc.* (1942), Ind., 42 N. E. (2d) 34, we interpreted the Adams case as meaning that the tax may be levied by the buyer's state regardless of the incidental interstate nature of the transaction. This view was sustained by the Supreme Court. *Allied Mills, Inc. v. Department of Treasury* (1943), — U. S. —, — L. Ed. —, — S. Ct. —.

Applying the above decisions to the case at bar, it seems clear that transactions under Classes C, D, and E are subject to our Gross Income Tax. Neither of these classes presents a possibility of double taxation, since no other state could impose such a burden in view of the conclusions reached in the J. D. Adams case.

Class A presents a different problem. Section 2 of Ch. 50, Acts 1933, §64-2602, Burns' 1933, §15982, Baldwin's 1934, which was in force during 1935 and 1936, provided:

"Such tax shall be levied upon the entire gross income of all residents of the state of Indiana, and upon the gross income derived from sources within the state of Indiana, of all persons and/or companies, including banks, who are not resident of the state of Indiana, but are engaged in business in this state, or who derived gross income from sources within this state. . . ."

It was beyond the power of the treasury department to broaden the tax base established by this statute by administrative regulations. In *Department of Treasury v. Muessel* (1941), 218 Ind. 250, 34, 32 N. E. (2d) 596, this court said:

"Unless the transaction comes clearly within one of the provisions of this definition it cannot be taxed as gross income. It is a settled rule of statutory construction that

statutes levying taxes are not to be extended by implications beyond the clear import of the language used, in order to enlarge their operation, so as to embrace transactions [fol. 175] not specifically pointed out. In case of doubt such statutes are to be construed more strongly against the state and in favor of the citizen."

The appellants would have us construe the statute as exempting only income derived *entirely from activities* outside of Indiana. This would distort the clear import of the language employed and violate the rule stated above. Under Class A the orders upon which the goods were sold were accepted outside the confines of Indiana; and payment was made to branches in other states. There was no showing of a tax evasion. We cannot say that income so received by the appellees was "derived from sources within the State of Indiana." Perhaps we should call attention to the fact that §2 of the Gross Income Tax of 1933 has since been amended. Acts 1937, Ch. 117, §2, p. 604, §64-2602, Burns' 1933 (Supp.), §15982, Baldwin's supp. 1937.

The judgment is affirmed as to Class A and E transactions, and reversed as to Classes C and D. The Superior Court of Marion County, Room 3, will sustain the appellants' motion for a new trial and enter a judgment as indicated by this opinion. The costs are adjudged equally against the parties.

[fol. 176] [File endorsement omitted.]

[fol. 177] IN SUPREME COURT OF INDIANA

[Title omitted]

APPELLANTS' PETITION FOR REHEARING—Filed March 29, 1943

Pursuant to Rule 2-22 of the Rules of the Court the Appellants herein respectfully petition the Court for a rehearing in the above-entitled appeal because the decision of the Court, made on March 19, 1943, holding that Appellees were not subject to the Indiana Gross Income Tax (Chap. 50, Acts of 1933), measured by Appellees' gross

receipts from their Class A Sales transactions reflected in the Record, is erroneous for each of the following reasons:

(1) The Commerce Clause of the Constitution does not [fol. 178] prohibit the application of the state tax, measured by such gross receipts;

(2) The decision of the Court in the case of *Department of Treasury et al. v. Allied Mills, Inc.* (1942), not yet officially reported, 42 N. E. (2d) 34, (Affirmed per curiam, U. S. Supreme Court, 63 S. Ct. 666), unless overruled, should control the decision in this case with reference to said Class A Transactions;

(3) The decision of March 19, 1943, with reference to Class A transactions, holds that the Department attempted to broaden the application of the taxing statute by regulation. No regulation ever promulgated by the Department applies to transactions such as Appellees' Class A transactions;

(4) The decision of March 19, 1943, with reference to Class A transactions, is erroneous in so far as it holds that the substance and effect of Section 2 of Chapter 50 of the Acts of 1933 was changed by the amendment thereof by Chapter 117 of the Acts of 1937;

(5) The decision of March 19, 1943 with reference to Class A transactions, is erroneous in so far as it holds that the place of acceptance of orders is material in determining liability for taxes, measured by gross receipts from sales, under the taxing Act involved;

(6) The decision of March 19, 1943 with reference to Class A transactions, is erroneous in so far as it holds that the place where payment was made is material in determining liability for taxes, measured by gross receipts for sales, under the taxing Act in question;

(7) The decision of March 19, 1943, with reference to Class A transactions is erroneous in so far as it holds the question of "tax evasion" is material in determining [fol. 179] liability for taxes under the taxing Act in question;

(8) The decision of March 19, 1943, is erroneous in holding that Appellees' gross receipts from their Class A sales

transactions were not from sources within the State of Indiana;

(9) The decision of March 19, 1943, erroneously holds that Appellees were not subject to the Gross Income Tax Act of 1933, so far as their receipts from Class A transactions are concerned.

Respectfully submitted, (Signed) James A. Emmert, Attorney General; (Signed) David I. Day, Jr., Deputy Attorney General; (Signed) Byron B. Emswiler, Deputy Attorney General, Attorneys for Appellants.

141 South Meridian St., Indianapolis, Indiana.

[fol. 180] [File endorsement omitted.]

Come now the appellants by counsel and file herein their proof of service from appellees, together with brief (9) in support of their petition for rehearing, which brief is in the words and figures following, to-wit: (H. I.)

[fol. 181] IN SUPREME COURT OF INDIANA

[Title omitted]

APPELLEES' PETITION FOR REHEARING—Filed April 8, 1943

The Appellees, International Harvester Company and International Harvester Company of America, respectfully petition the Court to grant a rehearing of its decision entered March 19, 1943 so far as said decision reverses the judgment of the trial court as to the taxes on sales in Class C and Class D involved in this appeal, and so far as it involves the affirmance of said judgment as to the tax on sales in Class E, and to modify said decision so as to affirm said judgment as to the taxes on Classes C and D and to reverse said judgment with respect to the taxes on sales in Class E, for the following reasons:

[fol. 182]

I

The taxes in Classes C, D and E are not taxes on the consumer on sales to the consumer conditioned on a local activity in Indiana but are taxes on the seller, a foreign cor-

poration, laid on gross receipts from wholesale sales as well as retail sales and involves the possibility of multiple tax burdens.

II

On the theory adopted by the Court that the buyer's state may lay the tax, the tax in Class D cannot be laid by Indiana because the buyer's state is outside Indiana.

III

The receipts from sales in Classes C, D and E are in large part derived from activities and sources outside Indiana and for that reason a gross receipts tax on the entire receipts in such Classes, unapportioned and not limited to amounts attributable to Indiana activities and sources, is prohibited by the due process clause of the fourteenth amendment to the federal constitution.

IV

The principal receipt producing activities in respect to the sales in Classes C and E and the principal source of such receipts were outside of Indiana and therefore the receipts from said sales are not from a source within Indiana under Section 2 of the Indiana gross income tax act of 1933 and are not subject to tax to appellees, foreign corporations.

Wherefore, appellees respectfully pray that the Court grant a rehearing of this cause and upon such rehearing modify its prior decision as above indicated.

International Harvester Company and International Harvester Company of America by (Signed) Ed-
[fol. 183] ward R. Lewis, Warrack Wallace, Paul
N. Rowe, Its Attorneys.

[File endorsement omitted.]

4/11/43 Petition denied (Signed) F. N. Richman C. J.

[fol. 184]

RECEIPT

Receipt is hereby acknowledged this 8th day of April, 1943, of a copy of Appellees' Petition for Rehearing and Brief in Support Thereof and Appellees' Brief in Reply

to Appellants' Brief in Support of Appellants' Petition for Rehearing.

(Signed) James A. Emmert, Attorney General;
 (Signed) David I. Day, Jr., Deputy Atty. General;
 (Signed) Byron B. Emswiler, Deputy Atty. General, Attorneys for Appellants.

[fol. 185] IN SUPREME COURT OF INDIANA

MINUTE ENTRIES

Come now the appellees by counsel and file herein their brief (9) on petition for rehearing, which brief is in the words and figures following, to-wit: (H. I.)

And come now the appellees by counsel and file herein their brief (9) in reply to appellants' brief in support of petition for rehearing, which brief is in the words and figures following, to-wit: (H. I.)

And afterwards, to-wit: On the 16th day of April, 1943, the same being the 125th judicial day of the November Term, 1942, of the Supreme Court, the following proceed-[fol. 186] ings were had in said cause, to-wit:

Department of Treasury, etc, et al Appellants,

vs.

International Harvester Co., et al Appellees.

No. 27767

Come now the appellants by counsel and file herein their brief (9) in reply to appellees' brief in support of appellees' petition for rehearing and receipt for copy of appellees, which brief is in the words and figures following, to-wit: (H. I.)

IN SUPREME COURT OF INDIANA

[Title omitted]

ORDER DENYING PETITIONS FOR REHEARING—May 11, 1943

Come now the parties by counsel and the court being advised in the premises, denies appellants' petition for rehearing.

And the court being further advised in the premises, denies appellees' petition for rehearing.

[fol. 187] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR RECORD AND DESIGNATION OF PORTIONS OF RECORD TO BE INCORPORATED INTO TRANSCRIPT

To: The Clerk of the Supreme Court of the State of Indiana:

You are hereby requested to prepare, certify and transmit to the Clerk of the Supreme Court of the United States, in conjunction with the Petition for Appeal filed this day by the Appellants in the above entitled cause, a transcript of the record in this cause, prepared, certified and transmitted as required by statute and by the Rules of the Supreme Court of the United States, and to include in said transcript the entire record, proceedings, pleadings, orders, entries, stipulation, evidence, exhibits, etc., contained in the transcript filed with you by the Clerk of the Superior Court of Marion County, Indiana, Room No. 3, on the appeal of this cause from said Superior Court to the Supreme Court of Indiana. You will also please include in said transcript of record the complete proceedings in the Supreme Court of Indiana with Points II, III, IV and V of Appellees' Brief, and this Praecipe for Record and Designation of Portions of Record to be Incorporated Into Transcript.

[fol. 188] (Signed) Joseph J. Daniels, Edward R. Lewis, Paul N. Rowe, Attorneys for Appellees.

[fol. 189] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 190] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed August 9, 1943

Being aggrieved by the final decision of the Supreme Court of the State of Indiana in the above-entitled cause, the plaintiffs therein, now appellants, International Harvester Company and International Harvester Company of

America, hereby pray that an appeal therefrom be allowed to the Supreme Court of the United States of America.

In support of this petition for appeal appellants assign the following errors in the record and proceedings in said case:

1. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class C transactions are subject to the Indiana Gross Income Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on interstate commerce under the commerce clause of the Constitution of the United States.

2. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class C transactions are subject to the Indiana [fol. 191] Gross Income Tax without apportionment of said receipts between that part thereof derived from sources in Indiana and that part thereof derived from sources outside Indiana, and without limiting the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class C transactions is invalid under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class D transactions are subject to the Indiana Gross Income Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on interstate commerce under the commerce clause of the Constitution of the United States.

4. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class D transactions are subject to the Indiana Gross Income Tax without apportionment of said receipts between that part thereof derived from sources in Indiana and that part thereof derived from sources outside Indiana, and without limiting the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class D transactions is invalid under the due process clause

of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class E transactions are subject to the Indiana Gross Income [fol. 192] Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on interstate commerce under the commerce clause of the Constitution of the United States.

6. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class E transactions are subject to the Indiana Gross Income Tax without apportionment of said receipts between that part thereof derived from sources in Indiana and that part thereof derived from sources outside Indiana, and without limiting the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class E transactions is invalid under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

For which errors appellants pray that said judgment of the Supreme Court of the State of Indiana entered March 19, 1943, in the above-entitled cause, be reversed and a judgment rendered in favor of said appellants, and for costs.

Joseph J. Daniels, Edward R. Lewis, Paul N. Rowe,
Counsel for Appellants.

Baker, Daniels, Wallace & Seagle, of Counsel.

[fol. 192a] [File endorsement omitted.]

[fol. 193] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed August 9, 1943

In support of their petition for appeal in the above entitled cause to the Supreme Court of the United States, the plaintiffs therein, now appellants, International Harvester

Company and International Harvester Company of America, hereby assign the following errors in the record and proceedings in said case:

1. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class C transactions are subject to the Indiana Gross Income Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on interstate commerce under the commerce clause of the Constitution of the United States.

2. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class C transactions are subject to the Indiana Gross Income Tax without apportionment of said receipts between that part thereof derived from sources in Indiana [fol. 194] and that part thereof derived from sources outside Indiana, and without limiting the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class C transactions is invalid under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class D transactions are subject to the Indiana Gross Income Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on interstate commerce under the commerce clause of the Constitution of the United States.

4. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class D transactions are subject to the Indiana Gross Income Tax without apportionment of said receipts between that part thereof derived from sources in Indiana and that part thereof derived from sources outside Indiana, and without limiting the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class D transactions is invalid under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class E transactions are subject to the Indiana Gross Income Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on interstate commerce under the commerce clause of the Constitution of the United States.

[fol. 195] 6. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class E transactions are subject to the Indiana Gross Income Tax without apportionment of said receipts between that part thereof derived from sources in Indiana and that part thereof derived from sources outside Indiana, and without limiting the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class E transactions is invalid under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Joseph J. Daniels, Edward R. Lewis, Paul N. Rowe,
Counsel for Appellants.

Baker, Daniels, Wallace & Seagle, of Counsel.

[fols. 195a-198] [File endorsement omitted.]

[fol. 199] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 9, 1943

The appellants in the above-entitled cause, and each of them, having this day filed their petition herein praying for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above-entitled cause by the Supreme Court of the State of Indiana on the 19th day of March, 1943, and from each and every part of said judgment adverse to said appellants, and having presented and filed their petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction, pursuant to the statutes and to the

rules of the Supreme Court of the United States in such case made and provided;

It is therefore now Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Indiana in the above-entitled cause, as provided by law, and it is further Ordered that the Clerk of the Supreme Court of the State of Indiana shall prepare and certify a transcript of the record, proceedings and judgment in this cause in accordance with the rules of the Supreme Court of the [fol. 200] United States and transmit the same to the Supreme Court of the United States, so that said transcript shall be filed with said Court within forty (40) days of this date.

And it is further Ordered that security for costs on appeal be fixed in the sum of Two Hundred Fifty Dollars (\$250.00) bond for which, with Fidelity and Deposit Company of Maryland, as surety thereon, is now presented by appellants, is approved and ordered filed with the Clerk of this Court.

Entered at Indianapolis, Indiana, this 9th day of August, 1943.

H. Nathan Swaim, Chief Justice of the Supreme Court of the State of Indiana.

[fol. 200a] [File endorsement omitted.]

[fol. 201] Citation in usual form, filed Aug. 9, 1943, omitted in printing.

[fol. 202] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR RECORD AND DESIGNATION OF PORTIONS OF
RECORD TO BE INCORPORATED INTO TRANSCRIPT

To The Clerk of the Supreme Court of the State of Indiana:

You are hereby requested to prepare, certify and transmit to the Clerk of the Supreme Court of the United States, in conjunction with the Petition for Appeal filed this day by the Appellants in the above entitled cause, a transcript of the record in this cause, prepared, certified and trans-

mitted as required by statute and by the Rules of the Supreme Court of the United States, and to include in said transcript the entire record, proceedings, pleadings, orders, entries, stipulation, evidence, exhibits, etc., contained in the transcript filed with you by the Clerk of the Superior Court of Marion County, Indiana Room No. 3, on the appeal of this cause from said Superior Court to the Supreme Court of Indiana. You will also please include in said transcript of record the complete proceedings in the Supreme Court of Indiana with Points II, III, IV and V of Appellees' Brief, and this Praecipe For Record and Designation of Portions of Record to be Incorporated Into Transcript.

Joseph J. Daniels, Edward R. Lewis, Paul N. Rowe,
Attorneys for Appellants.

[fol. 203] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 204] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANTS
AND DESIGNATION BY APPELLANTS OF THE PARTS OF THE
RECORD TO BE PRINTED, WITH PROOF OF SERVICE THEREOF—
Filed September 16, 1943

Pursuant to Rule 13, Paragraph 9, of this Court, Appellants state that the points upon which they intend to rely in this appeal are as follows:

1. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class C transactions are subject to the Indiana Gross Income Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on interstate commerce under the commerce clause of the Constitution of the United States.

2. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class C transactions are subject to the Indiana Gross Income Tax without apportionment of said receipts between that part thereof derived from [fol. 205] sources in Indiana and that part thereof derived from sources outside Indiana, and without limit-

ing the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class C transactions is invalid under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class D transactions are subject to the Indiana Gross Income Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on interstate commerce under the commerce clause of the Constitution of the United States.

4. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class D transactions are subject to the Indiana Gross Income Tax without apportionment of said receipts between that part thereof derived from sources in Indiana and that part thereof derived from sources outside Indiana, and without limiting the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class D transactions is invalid under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of the State of Indiana erred in holding that the receipts of appellants from sales in Class E transactions are subject to the Indiana Gross Income Tax; and in refusing to hold that said tax on said receipts is an invalid and prohibited burden on [fol. 206] interstate commerce under the commerce clause of the Constitution of the United States.

6. The Supreme Court of the State of Indiana erred in holding that the entire gross receipts of appellants from sales in Class E transactions are subject to the Indiana Gross Income Tax without apportionment of said receipts between that part thereof derived from sources in Indiana and that part thereof derived from sources outside Indiana, and without limiting the application of said tax to that part of said receipts derived from Indiana sources; and in refusing to hold that said tax as applied to said receipts from Class E transac-

tions is invalid under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Appellants further state that the entire transcript of record, as prepared by the Clerk of the Court below, is necessary for the consideration of the foregoing Statement of points and is hereby designated to be printed by the Clerk of this Court, except the following designated parts of said transcript of record which are not necessary for the consideration of said Statement of Points and should be omitted from the printed record herein, viz.:

1. Appellants' jurisdictional statement appearing in Volume II of said transcript of record.
2. Appellants' bond for costs appearing in Volume II of said transcript of record.

Joseph J. Daniels, Edward R. Lewis, Paul N. Rowe,
Attorneys for Appellants.

[fol. 207] .

PROOF OF SERVICE

STATE OF INDIANA,

County of Marion, ss:

Paul N. Rowe, being first duly sworn, upon oath says:

That on the 14th day of September, 1943, he served on James A. Emmert, Attorney General of the State of Indiana, a true copy of the above and foregoing Statement of Points to be Relied Upon by Appellants and Designation by Appellants of the Parts of the Record to be Printed, with Proof of Service Thereof, as evidenced by the receipt therefor appearing below signed in his presence by said James A. Emmert, as said Attorney General.

Paul N. Rowe.

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State this 14th day of September, 1943. Witness my hand and Notarial Seal. Irma Cox, Notary Public, Marion County, Indiana. My commission expires: June 9, 1946. (Seal.)

Receipt

Receipt of a true copy of the foregoing Statement of Points to be Relied Upon by Appellants and Designation by Appellants of the Parts of the Record to be Printed, with Proof of Service Thereof is hereby acknowledged this 14th day of September, 1943.

James A. Emmert, Attorney General of the State of
Indiana, Attorney for Appellees.

[fol. 207a] [File endorsement omitted.]

[fol. 208] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 25, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 47,848. Indiana Supreme Court. Term No. 355. International Harvester Company and International Harvester Company of America, Appellants, vs. Department of Treasury of the State of Indiana, M. Clifford Townsend, Joseph M. Robertson, et al., etc. Filed September 15, 1943. Term No. 355 O. T. 1943.

(8928)